

BEDMINSTER TOWNSHIP
LAND USE BOARD

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IN THE MATTER OF:

CASE LUB# 12-015 (BOA)
KDC SOLAR SA55 LLC
Solar Project
Country Club Road
Block 71.02, Lot 1
Block 62, Lot 10
Block 69, Lot 4

TRANSCRIPT
OF
PROCEEDINGS

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Thursday, October 8, 2015
Bedminster, New Jersey
Commencing at 7:09 p.m.

BOARD MEMBERS PRESENT:

GEORGE RODELIUS, Acting Chairman
CAROL GUTTSCHALL
NICK STRAKHOV
LOUIS DiGIOVINE
KATHY CHRISTIE

ALSO PRESENT:

JUDY SULLIVAN, Acting Board Secretary
FRANK BANISCH, Board Planner
PAUL W. FERRIERO, Board Engineer

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1 A P P E A R A N C E S:

2

 VOGEL, CHAIT, COLLINS and SCHNEIDER, P.C.
3 BY: THOMAS F. COLLINS, JR., ESQ.
 Attorneys for the Board

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 McCARTER & ENGLISH, LLP
6 BY: GARY T. HALL, ESQ.
 Attorneys for the Applicant

6

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 MICHELE R. DONATO, ESQ.
8 Attorneys for Objector Stop Somerset Hills
 Power Plant

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 RICHARD M. SASSO, ESQ.
11 Attorneys for Objectors Steve and Sabina
 Forbes

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1 ACTING CHAIRMAN RODELIUS: Okay. Let's
2 jump right into KDC Solar. I think the last time
3 we were here was April. Welcome back.

4 MR. HALL: Good evening. Gary Hall for
5 KDC Solar. Yes, it was April 30, actually.
6 Almost May, but April 30.

7 Good evening, Mr. Rodelius, members of
8 the Land Use Board. We have our planner tonight
9 to testify, if I could call him up.

10 ACTING CHAIRMAN RODELIUS: Great.

11 MR. HALL: I guess, Tom, do you swear
12 him in?

13 MR. COLLINS: Yes.

14 M I C H A E L T O B I A, having been
15 duly sworn, was examined and testified as
16 follows:

17 MR. COLLINS: Please state your name and
18 address for the record.

19 THE WITNESS: Sure. Michael Tobia,
20 T-O-B-I-A, the applicant's planning consultant.
21 Address is 546 Van Buren Road, Morristown.

22 DIRECT-EXAMINATION

23 BY MR. HALL:

24 Q. Okay. Mr. Tobia, you're a licensed
25 professional planner in the State of New Jersey?

1 **A. Yes, I am.**

2 Q. Could you briefly describe to the Board
3 your qualifications, experience, et cetera, as a
4 professional planner?

5 **A. Sure. So I'm a career-long professional**
6 **planner. I hold a Bachelor's degree in planning**
7 **from the New Jersey Institute of Technology; a**
8 **master's degree in planning from Rutgers**
9 **University. I finished my grad work in 1981; been**
10 **practicing exclusively in the field ever since.**

11 **Over the years I've made, by my**
12 **estimates, appearances before approximately two**
13 **hundred agencies of this nature -- planning**
14 **boards, zoning boards, town councils -- as well as**
15 **appearances in Superior Court as well as a number**
16 **of municipal courts.**

17 Q. And in those proceedings you've been
18 accepted as an expert witness?

19 **A. Every time.**

20 Q. Okay.

21 MR. HALL: I would offer Mr. Tobia as an
22 expert professional planner.

23 MR. COLLINS: The Board will accept
24 Mr. Tobia's qualifications as a professional
25 planner.

1 Please go ahead.

2 THE WITNESS: Thank you.

3 BY MR. HALL:

4 Q. Okay. Mr. Tobia, rather than me
5 interrupt, why don't you just tell the Board what
6 you've done in studying this project and what your
7 opinions are as a planner.

8 A. Okay. So as the Chairman indicated,
9 it's been -- has it been six months, is that
10 right? -- six months since our last hearing. We
11 thought what we would do is dust this off a little
12 bit, briefly describe the site plan as you last
13 saw it by speaking to A-15 to the Board's right.

14 THE WITNESS: And, Mr. Collins, this is
15 A-15 dated October 2nd, 2014.

16 A. So it's a year old site plan. There
17 have been no changes to the plan in the last
18 several months, but we wanted to go through it
19 with you so we all remember what we're talking
20 about. And then I'm going to go through the
21 planning proofs required of a use variance.

22 THE WITNESS: And, Mr. Chairman, I
23 intend to do this all in about a half an hour. So
24 we'll try and move it along.

25 Q. Before you get there, just so we're

1 clear, early on you came to some of the meetings
2 here, is that correct?

3 A. Okay. Yes, I'm sorry. So I attended I
4 think the first three meetings, Gary.

5 Q. Okay.

6 A. And reviewed transcripts for all of the
7 others except for transcripts relating to
8 stormwater, because I had a chance to talk to Rob
9 about stormwater. I've reviewed probably about
10 eight transcripts I'd say.

11 Q. And you've seen the exhibits and the
12 comment memos, et cetera?

13 A. Okay. Yeah. We should back up. I
14 reviewed all the comment letters, all the
15 exhibits, the master plan, the zoning ordinance.
16 I've been out to the site, on the site a half
17 dozen times probably by now, as well as around the
18 neighborhood perhaps 20 times.

19 Q. So your review of the proposal is based
20 on the record that's already before the Board
21 here?

22 A. That's correct.

23 Q. Okay. Why don't you proceed then.

24 A. Okay. So as you all know, this is a
25 proposal for a solar facility on a piece called

1 the Kirby Farm. The applicant is KDC SA55 LLC.
2 The house that's now on the property has an
3 address of 305 Country Club Road.

4 Although there are three lots involved,
5 virtually all of the activity proposed by the
6 applicant is on lot 10. The proposal is to build
7 a 10,000 megawatt solar facility to serve the
8 corporate offices of the Sanofi facility located
9 to the east of us in Bridgewater.

10 If you look at A-15, you'll see
11 basically the subject property, meaning lot 10,
12 which is the rather large parcel that goes down
13 the center of this exhibit; a lot 4, which is
14 controlled by the applicant but will not be built
15 upon; and then an isolated lot known as lot 1, a
16 skinny little thing in the northeast corner of
17 this exhibit that will eventually be merged with
18 the main lot if we get an approval from you all
19 for the application.

20 The installation is intended to collect
21 solar and convert it to electricity, to serve
22 roughly 75 percent of the Sanofi needs across the
23 highway.

24 If you look closely, you'll see there's
25 a blue dashed line that shows where a jack and

1 bore operation will go under lot 4 and then under
2 287 a run of approximately 2025 feet to the Sanofi
3 campus. It will terminate about 100 feet from one
4 of the buildings over there. Okay?

5 This project is basically divided into
6 two sections: A westerly portion and an easterly
7 portion. The total panels, as you heard explained
8 by our engineers, now numbers about 33,000 solar
9 panels. You may recall from over a year ago,
10 there was an earlier plan that showed up to 40,400
11 panels. So there was one major plan revision from
12 when we got started two years ago until roughly a
13 year ago. The new plan is what you see now.
14 We're at 33,000 solar panels. And roughly that
15 breaks down to a third to the east and two-thirds
16 of the panels to the west.

17 The whole enclosure in fences around
18 each of the two collections, the two clusters, is
19 about 38 acres of the 132 acres on the overall
20 property. So 38 acres, as we've said in the past,
21 is in the fence, meaning it's the fenced
22 enclosure. Everything else is used for setbacks
23 and buffers. Okay?

24 Let's talk about the clusters for a
25 second. And one of the big things I have to share

1 with you tonight is a discussion of setbacks and
2 buffers, because I think it really speaks to how
3 this thing will be hidden from public view from
4 both our neighbors as well as passers-by on
5 Country Club Road and Meadow Road.

6 Speaking of which, let's remind
7 everybody, Country Club Road is located to the
8 right, or east, of the exhibit and then we are on
9 a corner lot. And Meadow Road runs to the south
10 of the exhibit, angles south towards Bridgewater
11 in the lower portion of Exhibit A-15.

12 The easterly cluster on the property, as
13 I said, yields about one-third of the total
14 panels. The front yard setback from Country Club
15 Road at the elbow, I'll call it, is about 237
16 feet, so indicated with my pointer. I guess it's
17 right about there. This tapers up to 690 feet in
18 the northeast corner of the site. It provides a
19 steady 200-foot setback across the entire
20 northerly property line contiguous to Preston
21 Terrace and Somerset Terrace to the north.

22 As far as Meadow Road goes, it's about
23 780 feet from the nearest panel -- and all these
24 setbacks I'm going to share with you are from the
25 nearest panel -- 780 feet down to the elbow in

1 Meadow Road. Okay?

2 The westerly cluster provides a
3 similarly large setback of approximately 700 feet
4 from Meadow to the nearest array. It provides a
5 200-foot, 211-foot setback from the nearest array
6 to the southerly property line. Not to the road
7 but to the property line. It provides 200 feet of
8 setback again off the northerly property line and
9 it provides 240 feet off the westerly property
10 line abutting, if I recall, is lot 10. No, I'm
11 sorry, lot 9 to the west.

12 Okay. So this was laid out, just so you
13 know, to treat the panels as if they were a
14 permitted use in the zone which would require a
15 minimum setback of 200 feet. So if your house and
16 some of the other permitted uses in the zone,
17 although they're much taller than panels, we took
18 that 200-foot setback as gospel, used it all
19 around the site and in many areas expanded it to a
20 much greater setback.

21 There are seven inverters proposed on
22 the site. On these little rectangles you see
23 these pads that convert the DC power to AC power.
24 They're basically cabinets that look like small
25 refrigerators. Okay?

1 A 7-foot-high chain-link fence now
2 encircles both clusters. In select areas that
3 7-foot fence, as you may recall, will have a dark
4 green fabric mesh on it to hide the panels that
5 will be along the entire northerly property line
6 we'll have that fabric, as well as the southeast
7 and south portion of the easterly array.
8 Everything else will be fenced with a 7-foot-high
9 enclosure pursuant to the -- to what I think is
10 the National Electrical Code. So this is an
11 enclosed facility with gates that enter the array
12 and otherwise is completely encircled by cyclone
13 fence.

14 The house, the garage and the existing
15 driveway remain. A second driveway will be added
16 up to the northerly end of Country Club Road where
17 it will connect to a small 12 by -- or 11-by-24
18 enclosure that will have other utility equipment
19 as well as the jack and bore operation for the
20 property. That little area shown thus in the
21 northeast corner of the site will be encircled by
22 fence and the fabric as well. Okay? It's about
23 200 feet back off the street.

24 No lighting is proposed, no security
25 lighting is proposed, no cabinet lighting is

1 proposed. So this is an unlighted facility.

2 Landscaping, let's talk about it for a
3 second. There's an aggressive landscaping plan
4 along the easterly cluster of the proposed
5 installation. It is a landscaping plan that
6 proposes 17 shade trees, 42 evergreens and three
7 shrubs. That is the area more or less parallel
8 with Country Club Road.

9 Along the northerly edge of this same
10 cluster is a berm. Talked a lot about this
11 through engineering testimony. It's about 1150
12 feet in length. It's about 2 feet high at its
13 lowest point, 7 feet high at its highest point.
14 And that area will be planted, in addition to the
15 fencing, with the 36 shade trees, 30 evergreens
16 and 80 shrubs.

17 There was dialogue with a property owner
18 to the north several meetings ago, a Mr. Hoynes,
19 about landscaping needed off to the northwest side
20 of the site and additional landscaping was
21 provided in that area. And you can see if you
22 look closely a long black line up here. That
23 depicts a total of 224 evergreens. Okay?

24 It's important to note the tree line
25 along the northerly property line that now exists,

1 the trees stand along the westerly property line
2 that now exists. All the plant material along the
3 property line on Meadow Road and the valuable
4 hedgerow and scrub that you see in the northeast
5 corner of this site will remain undisturbed.

6 I think I mentioned the berm across the
7 top. I mentioned the jack and bore that goes
8 under the highway.

9 And let's talk quickly about how the
10 plan has changed. In addition to panels being
11 reduced in number from 40,000 roughly to 33,000,
12 panel height was reduced also. You might recall
13 there was an 8-foot-high panel proposed with the
14 initial application. Now we're down to a panel
15 that at its maximum height is 5 feet.

16 Panels have been pushed closer together
17 to create better economies within the field, so
18 the spacing between panels is now about 5 feet on
19 average from 9 feet previously.

20 Importantly, the most significant
21 revision was the removal of all panels, grading,
22 berming and plant material in the southeast corner
23 of the site near the intersection of Country Club
24 and Meadow Road. So the farm field you see out
25 here now, which is a field that's occasionally

1 hayed and provides really valuable topographic
2 change moving from the roads up to the center of
3 the site, stays exactly the way it is now.
4 Previously that was more or less covered with
5 panels.

6 The switchgear area to the northeast
7 corner of the site has been moved 150 feet further
8 from our neighbors up on Preston. This setback
9 now is approximately 350 feet. It was only 200
10 feet with the earlier plan.

11 We mentioned the fencing. It's now
12 chain-link covered with a kind of a camouflaged
13 mesh, a dark green mesh that will prevent you from
14 seeing through the fence.

15 Lot coverage we'll talk about later.
16 It's been reduced to 15.9 percent from 17.1
17 percent.

18 The overall footprint of the project,
19 because we're now omitting that area, folks, in
20 the southeast corner of the site is now down to a
21 disturbance of 38.6 acres from 53.2 acres.

22 One other important change and a final
23 one is this project requires a service road for
24 folks to get in and access the site, mow lawns,
25 maintain facilities, things like that. We had a

1 service road previously proposed along the
2 northerly property line. It was roughly 25 to 50
3 feet from the northerly property line. I think
4 there was input that it was too close to the homes
5 up there. It's been moved all the way to the
6 center, more or less the exact center of the site.
7 Still runs east-west from the existing home out to
8 the middle part of the western cluster. It is now
9 720 to 880 feet from the property line. So it's
10 moved away by 700 feet minimum roughly. Okay?

11 There is now no service road proposed up
12 top. Okay? And there's still access points
13 that would run north-south through the clusters.

14 So that's what's happened. That's where
15 we are with the plan now. It hasn't changed in a
16 year. There was a topographical and plant
17 analysis that was done that was discussed by
18 Mr. Kennedy a year ago that concluded -- and I
19 agree with this, I've been over it carefully --
20 that from Country Club Road, from Meadow Road and
21 importantly from our residential neighbors to the
22 north, the use of existing plant material,
23 proposed plant material, berming and fencing will
24 all virtually completely shield this thing from
25 public view. Most of that's achieved just by

1 these rather large setbacks that we've proposed
2 which run from 200 to, I think I said, 700 and --
3 780 feet off of Meadow. And, also, because we're
4 dealing with objects that are 5 feet high.

5 Let's talk zoning for a couple minutes.
6 It's okay, Gary?

7 Q. Sure.

8 A. This is an R-10 zone. It's a rural
9 residential zone. It's a minimum lot size of 10
10 acres. The zone permits a variety of land uses:
11 One is farming and various agricultural land uses;
12 one is single-family homes; another is houses of
13 worship; permits a variety of schools; it permits
14 airports, boarding schools, open air clubs, golf
15 courses and facilities to support ag. Okay?

16 So it permits a fairly wide variety of
17 uses. It does not permit solar so consequently
18 we're before this agency to ask for what you all
19 know is a use variance.

20 In addition to that, there is some
21 discussion -- and this was in Mr. Ferriero's
22 report from many moons ago -- about the possible
23 need for a lot coverage variance. This is mostly
24 a legal and interpretive question.

25 I wanted to tell you, though, that if

1 Mr. Ferriero's interpretation of the ordinance is
2 recognized, you have a requirement for 5 percent
3 coverage maximum in the zone. You have an
4 existing condition of .13 percent coverage with
5 the existing house and driveway, meaning a little
6 bit more over one-tenth of 1 percent of coverage
7 on the site. And if the panels are included in
8 the calculation, now you have a 15.9 percent
9 coverage condition. So 5 percent proposed; 15.9
10 percent if you counted all the panels. We'll get
11 more into that in a minute.

12 This is a use variance case first and
13 foremost. Solar's not permitted in the zone.
14 Your solar ordinance and ordinances in general
15 recognize that an accessory use like this is
16 normally required to be on the property that it is
17 intended to serve.

18 When you build a garage, you expect it
19 to be on the same lot as the house. When you
20 build a swimming pool, you expect it to be on the
21 same lot as the house. We have an anomaly here
22 because we cannot locate solar on the Sanofi piece
23 to the east in Bridgewater. We're looking for the
24 next best thing. It is a use variance. We're
25 going to put proofs on right now.

1 Normally when you ask for this type of
2 variance, as you know, and Mr. Collins' advice to
3 you over the years, you normally have tests
4 established by the Supreme Court in what's called
5 the Medici decision. That says you have to
6 provide testimony that says that the site is
7 particularly suited for the use and that it
8 consequently promotes the general welfare. That
9 language usually means the proposed use and the
10 site are reasonably distinguished so that the use
11 of the site to accommodate the nonpermitted use is
12 deemed acceptable by the Board. It's called the
13 special reasons or the positive criteria.

14 Several years after the Medici case came
15 a case, five years to be exact, called Sica. And
16 Sica zoomed in on what happens when you have
17 inherently beneficial land uses. What Sica said
18 back in 1992 is the standard of Medici does not
19 apply to things like churches and hospitals. We
20 want to relax our zoning review of uses that help
21 the public to a great degree.

22 And they modified the standards of
23 Medici and they simply said if you're inherently
24 beneficial, you automatically meet the so-called
25 positive criteria. You don't have to show the

1 site's particularly suited. You're granted as a
2 matter of law that you've satisfied that portion
3 of the test because you serve the public good.

4 Sica also said that it's only commercial
5 uses that are subject to this particular
6 suitability test. It also said that inherently
7 beneficial land uses are too important to be
8 prevented from locating on appropriate sites if
9 you can impose reasonable conditions and
10 qualifications.

11 Sica went on to say don't get too strict
12 in your review of the detriments of a use such as
13 a hospital or a school because if you do, you can
14 deny anything. And the law clearly favors these
15 land uses and so it suggests a relaxed review of
16 inherently beneficial land uses.

17 I tell you all that because in 2009,
18 solar, through an amendment to the Municipal Land
19 Use Law, was deemed by definition an inherently
20 beneficial land use. It was merged with uses such
21 as hospitals, schools, childcare centers, group
22 homes, wind as inherently beneficial.

23 The statute in 2009 also said solar is
24 defined as a use, whether it's a principal use or
25 an accessory use. Okay? Which means whether it's

1 on the property to be served, it may be on another
2 property, whether it's the only use of a parcel or
3 just a use such as what we're proposing here,
4 which is ancillary to Sanofi. The law is clear
5 that we are an inherently beneficial use.
6 Consequently we meet the special reasons test,
7 which is one of a two-prong test, for this use.

8 If we didn't and if we were not an
9 inherently beneficial land use, the other test I
10 just told you about would be easily met by this
11 applicant. That test just says are you
12 particularly suited?

13 Here, you've heard through, I think, six
14 witnesses before me that says Sanofi has massive
15 energy needs. Sanofi's ownership, the people who
16 own those buildings -- and it's not Sanofi -- will
17 not allow solar on their property for a variety of
18 reasons.

19 A new site's been selected immediately
20 adjacent to Sanofi, the subject property, which is
21 huge and can do two things with this rather
22 enormous land area: One, provide enough space for
23 the panels that we need to power Sanofi; and, two,
24 provide even more space for buffers and setbacks.

25 The size of the property and its

1 proximity to Sanofi lead me to conclude this
2 easily would have met the particular suitability
3 test if it was required.

4 Perhaps more importantly solar, as you
5 heard from our first witness, I think Tom Lynch
6 from KDC, provides enormous societal benefits in
7 terms of a world now struggling with climate
8 change, energy shortages, energy dependence, air
9 pollution. Solar is a use that's an alternative
10 energy source. It's renewable, sustainable,
11 mostly pollution-free, and a lower-cost energy
12 source for people like Sanofi or people like us
13 who want to put panels on our homes.

14 So there are a variety of public
15 benefits that come with solar in my opinion that
16 are indisputable and exceedingly important if we
17 want to move to a greener society and also to a
18 more economically stable society.

19 People -- companies, I should say, look
20 at electrical, they look at property taxes, they
21 look at traffic congestion as reasons to move out
22 of an area. One way you stabilize a big
23 employment base like Sanofi, which has 3,000
24 workers right now at that facility, is lower the
25 cost of electrical power. That's another benefit

1 of what's being proposed by this applicant.

2 For all those reasons, I think it's easy
3 to conclude that we meet the positive criteria for
4 this case. It's also important to point out your
5 master plan, which we're going to talk a lot about
6 in the next few minutes, has goals that
7 specifically say encourage the use of renewable
8 energy. At a minimum you could look at pages 3
9 and 30 and 35 of your master plan. That says just
10 that. Okay? Encourage the use of renewable
11 energy.

12 The Municipal Land Use Law, also in Goal
13 N at the very beginning of that document, says
14 promote utilization of renewable energy sources.
15 So this application satisfies goals of your local
16 master plan as well as the all-important Municipal
17 Land Use Law.

18 Now, as nice as all those things I just
19 said are, if you can't satisfy the second prong of
20 the test, you should not be able to get an
21 approval for an inherently beneficial land use.
22 The second prong of the test, therefore, is called
23 the negative criteria and it says "No variance,
24 including inherently beneficial variance requests,
25 can be granted without a showing that the variance

1 will not be a substantial detriment to the public
2 good, nor a substantial intent -- a substantial
3 impairment to the intent and purpose of the zone
4 plan and zoning ordinance."

5 I wish, unlike our court reporter, I
6 remembered to bring a bottle of water with me
7 also.

8 So we have a couple of things we have to
9 talk about.

10 A. The breakdown here is, is this a really
11 bad thing for the neighborhood? Does it really
12 impair your zoning ordinance? Which is a nice
13 document with a great vision for Bedminster.

14 I want to go through, first, the
15 substantial detriment test. Is it bad for the
16 neighborhood? Is it a substantial detriment to
17 the public good? Substantial means considerable,
18 it means real and tangible, it means essential.
19 And it says in Webster's it doesn't mean
20 imaginary. Okay? It's got to be substantial.
21 And the courts have always emphasized the word
22 "substantial" in this analysis.

23 We show you here a parcel that is 13
24 acres -- or 13 times the 10 acre minimum lot size
25 in the zone. Okay? It's massive. Not only does

1 it greatly exceed your minimum lot size, it also
2 allows huge buffers, setbacks, saving of trees,
3 saving of hedgerows, and the addition of plant
4 materials and fences with ease, even though we do
5 need a lot of land to do the panels, 38 acres more
6 or less to do the panels. So we have a lot of
7 land.

8 We meet setbacks. If we were building a
9 house or a church or a school on this property,
10 you'd be subject to a 200-foot setback. And for
11 5-foot-high panels, we easily meet that 200-foot
12 setback all around the property.

13 We've added, as I told you, hundreds of
14 plants, both evergreen and deciduous. We added a
15 berm along the northerly property line, an
16 evergreen screen along the northern property line
17 where our residential neighbors are.

18 Perhaps most importantly, this entire
19 swath of land to the west of Country Club Road has
20 been or will be retained in its natural state to
21 block this facility from public view.

22 Topographic conditions along the road
23 have been examined. Country Club roughly ranges
24 from 120 feet elevation to 130, maybe 135, whereas
25 the center of the site goes up roughly 20 to 30

1 feet above that.

2 Mr. Kennedy explains that as you move up
3 that slope, you reach the top and you have a
4 crown. It's that crown or bulb that will block
5 much of the view from the all-important Country
6 Club Road from passers-by.

7 This site right now is not exactly what
8 I would call an open scenic vista. If you go out
9 to Rattlesnake -- Bridge Road, is it? --
10 Rattlesnake Bridge Road to the west side of town
11 and you look west, you'll see scenic vistas that
12 extend perhaps well over a thousand feet.

13 Here you have a vista, which is
14 valuable, but it only extends two or three hundred
15 feet mostly across the front of this area. It's
16 all being preserved. We think that helps conclude
17 that your scenic vistas and your nice driving
18 condition along Country Club Road, which is
19 beautiful, and along Meadow Road will be retained
20 exactly as you see them now.

21 The use of the green mesh and fencing 7
22 feet high, which is higher than the 5-foot berm,
23 will also guarantee encircling the panel material
24 with something that cannot be seen through and
25 will provide further shielding of the facility.

1 I wanted to talk for a moment, I know it
2 was Chairman Boxer who raised questions about
3 agricultural soil and farmland preservation. My
4 conclusion is -- and let me back up a little bit.
5 A little foundation for you.

6 It was established by Mr. Kennedy in his
7 aerial photography analysis as well as my hiking
8 through the entire rear of this property that the
9 back half of this site, meaning lot 10, obviously
10 hasn't been farmed for 25 years or more. It's
11 covered in cedars, some hardwoods, a tremendous
12 amount of undergrowth. The evergreen plant
13 material you see out there in a lot of spots is 20
14 feet high. It takes a long time for that stuff to
15 get 20 feet high. Whether this is prime ag land
16 or not, it hasn't been used for farming,
17 Mr. Kennedy said, since the late '80s. I agree
18 with that.

19 The front portion of the site is lightly
20 farmed at best. Right now the only actively
21 farmed area is, in fact, this area of the corner
22 of Country Club and Meadow. It was hayed
23 recently. The rest of where the solar field is
24 now, the easterly cluster, is in kind of a meadow
25 condition.

1 We've been told by the person who
2 maintains this that right now the yield for hay,
3 the demand for hay, which is what's being
4 harvested here, is relatively modest. These
5 fields get rotated. First it's the third field
6 down below, and then it might wander up to behind
7 the house, and then it might wander up to the
8 northwest depending on the season.

9 The yield right now, agriculturally
10 speaking, is about 12 acres gets cultivated a
11 season. That's exactly how it would remain if
12 this application is approved. And it would be
13 this all-important front corner, which not only
14 provides yield from an agricultural standpoint,
15 but it also provides the visual of farming at the
16 most visible part on the site.

17 Beyond that in terms of agricultural
18 activity and farmland preservation, it's important
19 to just remind you -- and I don't do grading
20 plans, but the engineering witnesses have
21 explained there is no soil export taking place as
22 a result of this project. Okay? None of the ag
23 soil is getting scraped up and taken away. Only a
24 minimal amount of the soil on the site is even
25 being contoured right now. Some activity will

1 take place along the berm to the north and some
2 grading will take place to do detention basins.

3 The vast majority of the site is staying
4 just the way it is. All the panels are being
5 ballasted now. Nothing under the panels is being
6 graded or leveled to put those panels on it. And
7 if you've been to solar fields elsewhere, unlike
8 buildings we don't have to flatten a site to build
9 the buildings. The panels will gently meander
10 down slopes, of which there are a few on this
11 site, without the need for any grading under, say,
12 these panels to the west.

13 For those reasons, you know, I conclude
14 that this is a big goal of your master plan. The
15 farmland here, if this lease ends, say, 20 years
16 from now, can immediately be put back to its
17 current condition. Whether it's farmed or not, I
18 cannot predict. The conclusion is we are not
19 forever compromising this site as an eventual farm
20 site and in the meantime we're at least using a
21 portion of it to maintain the visual and
22 agricultural yield of farmland.

23 In one of the more creative approaches
24 on this job, the applicant will be mowing lawn and
25 hay and wildflowers within the fenced enclosure

1 with sheep. There will be no lawnmowers used, no
2 tractors, and only a minimal amount of
3 weed-whackers. This has been tested on two other
4 facilities they have with tremendous success.
5 As far as our neighbors go, that means you're
6 getting basically a noise-free, pollution-free
7 solution to how we maintain that ground area under
8 the panels.

9 The applicant, if they haven't already,
10 and we're unclear on this, will be submitting to
11 you all a decommissioning plan that explains what
12 happens if the facility does leave us in 20 years,
13 how the material is removed, how the berms will be
14 graded back to their existing state to guarantee
15 you that this isn't left out here as a mess when
16 everything is finished.

17 Your master plan looks at your R-10 zone
18 and it calculates that the zone covers an amazing
19 13,000 acres of lands. The disturbed area on this
20 site for solar is 38 acres. It works out to a
21 third of 1 percent of your entire zone. Had
22 hypothetically we put 38 acres into the middle of
23 Pluckemin, let's say, in the business district, it
24 would devastate the business district.
25 Thirty-eight acres is a lot of land in Pluckemin.

1 Here, it's one-third of 1 percent of your entire
2 zone district, surrounded by a 200- to
3 700-foot-plus buffer. I view its impact on your
4 zone, the R-10 zone, as microscopic. Okay?

5 Beyond that, this is a really unusual
6 land use in terms of the development impacts we
7 normally ponder when we review cases. It has
8 essentially no traffic. It has no lighting. It
9 has none of the usual emissions and pollutions and
10 things of that nature. You heard from a very
11 skilled acoustical engineer a few months back,
12 Norm Dotti, who said you would not hear anything
13 at the property line. And he boasted a little
14 bit. He said, "I never get to say that." But
15 this is basically a silent land use at the
16 property line. I've witnessed it myself. Most of
17 the noise that comes from this is around these
18 inverters. By the time you're 20 feet or 30 feet
19 away from these cabinets, they're mostly silent in
20 the context of the ambient noise pattern.

21 So we have no traffic to speak of; we
22 have no acoustical impact to speak of. The visual
23 impact here I'm confident, because these panels
24 are so small in height and our setbacks are so
25 great, will not be visible in any way that could

1 constitute a substantial detriment to the
2 neighborhood.

3 Stormwater's been talked about at
4 length. That's not my field of expertise. The
5 conclusions there by Rob, our engineer, was that
6 recharge, attenuation, water quality will all be
7 met. And I think the final exchange with
8 Mr. Ferriero was that there may be some things
9 that have to be tweaked, but that the applicant's
10 fully willing to do that as we move through
11 getting this from zoning to construction.

12 So maybe that was 35 minutes, but I kind
13 of got to it as best I could.

14 Q. I do have a couple more questions.

15 A. Yep. So you're going to slow me down,
16 Gary?

17 Q. I don't know if you were about to stop,
18 but you said early on that the solar, this use, is
19 not permitted. The town did adopt a solar
20 ordinance last year. Can you respond to that?
21 And it's been -- I think I argued against it, but
22 there was a ruling that that applies to this
23 project.

24 A. Right.

25 Q. Could you go through that and address

1 consistency and how that fits into the mix?

2 A. And your planner, Mr. Banisch, also
3 wrote a nice report on this topic. First of all,
4 it's important to note the solar contemplated in
5 the town, which is a town-wide ambition, I think
6 pretty much every zone permits some type of solar,
7 whether it's rooftop or canopies like you have out
8 in the parking lot here or ground mounts like you
9 see proposed by KDC.

10 A couple things that we fall short on is
11 an expectation in the ordinance that the solar
12 should power a building on the same site. Okay?
13 We don't do that. We need a variance or we need
14 you to understand that that's subsumed within the
15 whole variance that we've talked about before. It
16 says the principal building must be on the same
17 lot. It says no new access drive should be
18 permitted. You should use existing curb cuts. I
19 told you we have that existing drive to the north
20 of the site on Country Club Road.

21 However, the ordinance also says some
22 things that I was persuaded by and I think are
23 pretty positive and I wanted to share them with
24 you just quickly. It establishes in its preamble
25 a remark that says solar should be as

1 inconspicuous and unobtrusive as is reasonably
2 possible. And I believe this applicant has done
3 that. Okay? The fencing, landscaping, berming,
4 the setbacks and use of existing topo meet this
5 rather balanced statement that says inconspicuous,
6 unobtrusive as reasonably possible.

7 The ordinance also says panels can't go
8 to more than 6 feet high; we're at 5. The
9 ordinance also says that you can use buffers. It
10 recommends a planting schedule, which we have far
11 exceeded in terms of minimum number of plants that
12 can be provided. It says existing features may be
13 substituted for buffering material including
14 hedgerows, forested areas and existing buildings.

15 Now, this plan saves a nice hedgerow and
16 tree line along Meadow Road. It saves all the
17 plant material to the westerly property line. It
18 saves a 200-foot swath of tree material now
19 existing probably 50, 60 feet high in the
20 northwest section of the site. It saves an
21 extremely valuable tree line between our neighbors
22 on Somerset and Preston to the northeast of the
23 site. It retains this scrub hedgerow, scrub and
24 cedar growth, which doesn't show well on this
25 aerial incidentally, but is extremely valuable in

1 blocking the view from Country Club Road looking
2 due west at our easterly panel. So it meets the
3 spirit of your ordinance in that respect. It
4 talks about providing a fence inside the perimeter
5 landscaping, and we're doing that. So all our
6 plant material goes outside our proposed fence.

7 It says no solar facility may be located
8 in a critical area. Two engineers on our side
9 have confirmed that there's nothing about this
10 that's going into wetlands, let's say.

11 It suggests as mounting devices things
12 like earth screws, auger driving or similar
13 systems. We originally on this job proposed pile
14 driving of all the facilities if you remember. We
15 switched that to a ballast system which is less
16 invasive. And these are just, like,
17 thousand-pound weights sitting on the solar arrays
18 to stabilize these things without any ground
19 penetration. We think that meets the broad intent
20 of your ordinance.

21 The ordinance says minimize soil
22 disturbance. For the reasons I've mentioned,
23 we're really doing a heck of a job without moving
24 around a lot of soil with zero export of soil from
25 the facility.

1 The ordinance says use shade-tolerant
2 grasses to stabilize soils. I have to tell you
3 I've been to a couple KDC facilities. Their use
4 of soil and wild -- and grass and wildflower
5 materials along the carpet under these panels is
6 extraordinarily successful. I believe that's all
7 shown on the plan, but you all should be clear KDC
8 has this down to a science. And if you're
9 looking at stabilization, ground cover, they've
10 done it.

11 The ordinance does say, also, that no
12 portion of a ground mount shall occupy prime ag
13 soils. Here's an area where I want to repeat what
14 I said. A lot of the soils are not being
15 disturbed. The ones in front, which are the
16 active ag soils, will remain in this use. We're
17 going to use the same farmer, we're going to hay
18 just the way we do now, and you're going to have
19 that visual and that productivity up in front.
20 Anything that's ag soil all around will remain as
21 such. Everything at the rear of the property
22 hasn't been farmed for a couple and a half decades
23 anyway. When this job is pulled, if it's ever
24 pulled from the site, the soils that are there now
25 will be the soils that are there a couple decades

1 from now.

2 I also want to point out in all fairness
3 for a balanced ordinance, if you built a home, if
4 you built a golf course, if you built a church, if
5 you built a school on this property, you'd be
6 destroying or disturbing ag soils a lot more than
7 what's going on with this application.

8 Q. And on your review of the ordinance, are
9 there any regulations that restrict or prohibit
10 development on ag soils that you've seen?

11 A. No, that's a good point. If you go
12 through -- aside from solar, if you go through
13 your entire ordinance, I don't think there's a
14 provision in there that says you can't disturb ag
15 to build a home or you can't disturb ag to build a
16 church. It appears nowhere but in your solar
17 ordinance, and we've done our best to comply with
18 that.

19 So you forgot to ask me about lot
20 coverage.

21 Q. Right. That was the other item on my
22 list. You mentioned it early on and said you'd
23 get back to it. Why don't you say a little --

24 THE WITNESS: I just want two minutes on
25 this and then I'm finished, Mr. Chairman.

1 A. Your ordinance has a requirement that
2 controls coverage of land with a term called "lot
3 coverage." When the solar legislation was enacted
4 a few years ago, the state through the Municipal
5 Land Use Law and other statutes said impervious
6 coverage caused by solar panels, meaning the
7 actual slanted panels used to collect sun, shall
8 not be included in the calculation of impervious
9 coverage.

10 Your ordinance does not use the term
11 "impervious coverage." It uses the term "lot
12 coverage." Mr. Ferriero, therefore, has said,
13 well, panels should be calculated within it and
14 that's why we gave you that number of 15.9
15 percent, which is triple what the permitted
16 coverage is.

17 However, if you look at the definition
18 in the statute, "impervious coverage" is the term
19 of trade that they use. And "impervious coverage"
20 is a term used in your definition of lot coverage.
21 So your def says lot coverage includes the term
22 "impervious coverage."

23 The statute says "Any solar panel as
24 defined herein shall be exempt from any
25 calculation of impervious surface or impervious

1 cover." The statute was so strict and so
2 emphatic, it wasn't just the Municipal Land Use
3 Law statute that was exempt, it was all these
4 other land use statutes that planners get to use,
5 such as Pinelands, CAFRA, Highlands, County
6 Planning Act, and others.

7 I think the two terms are synonymous. I
8 think the focus that you should have -- and the
9 attorneys have to work all this out. The focus
10 you should have is the coverage provided by
11 everything but the panels, which equals 3.59
12 percent and is below your 5 percent threshold.

13 Q. And the 15.9 number, what does that
14 include?

15 A. All the panels as well as everything
16 else.

17 Q. Okay.

18 A. Just so you're all clear on this, the
19 3.59 means the driveways, both existing and new,
20 the home, the garage, these trails, folks, that
21 run through the property, the pads under the
22 inverters, the pads under the switchgear.
23 Everything but the surface of the panel is how we
24 got to that number of 3.59 percent.

25 Q. And, Mr. Tobia, assuming using the

1 township interpretation, the 15.9 percent, do you
2 have an opinion whether if that applies literally
3 variance relief would be appropriate?

4 A. So I gave you -- some of this does veer
5 off into engineering and I know you covered that
6 already. If you go out and look at a solar panel,
7 all it is is a slanted 3-by-5 piece of glass and
8 aluminum. All the water does, folks, is slide
9 down that and end up underneath the panel anyway.

10 This is an inherently beneficial land
11 use. I feel flexibility, Gary, on what I consider
12 a rather minor bulk variance is acceptable given
13 that it's inherently beneficial as well.

14 And I did want to wrap up --

15 Q. While you're on that, would that same
16 opinion apply to the extent that there are
17 technical deviations from the solar ordinance and
18 if it applies?

19 A. Yes, I think solar's swept through. The
20 long and the short of your solar ordinance is you
21 don't allow a facility of this size to be located
22 any place. You do have zones that permit ground
23 mounts. The zones are too small and too far away
24 to work for this applicant. You have ground
25 mounts permitted in R-10, but the way it's

1 constructed there's absolutely no vision that it's
2 supposed to go and use a major facility like
3 Sanofi.

4 So when zoning doesn't work, when it
5 prohibits things, when it's so complicated you
6 can't get a use that you want, you are entitled to
7 make application for a use variance. That's why
8 this Board exists and the process exists and the
9 applicant's asking for a use variance.

10 I'll close by saying we, KDC and I and
11 Gary, worked out some calculations on what 10
12 megawatts means. It's the equivalent of 1233
13 single-family homes and their annual electrical
14 usage for a year. That's more single-family homes
15 than Mr. Banisch shows in the master plan for your
16 community right now. A little bit more. Okay?

17 But that's the magnitude of the benefit
18 here is that this is a lot of electricity, a lot
19 of sustainable electricity, for a corporate user
20 that has significant regional benefits for not
21 only Bridgewater and Bedminster, but the whole
22 area.

23 I'm finished.

24 Q. Just one quick follow-up. You said we
25 came up with a number. Was that based on --

1 wasn't that based on U.S. EPA figures?

2 **A. Yes.**

3 Q. We didn't pull it out of the air.

4 **A. We didn't pull it out of the air.**

5 **There's scientific conversions. And anyone can**
6 **look it up.**

7 THE WITNESS: I think it was called the
8 EPA Calculator, Josh?

9 **A. The EPA calculator. It converts solar**
10 **savings into how many cars you could get off the**
11 **road, how many houses you could use, how many**
12 **lawnmowers. It's a nice conversion. The one we**
13 **used was just homes. And it's a lot of power.**
14 **It's 3,000 employees, after all, who would benefit**
15 **from this and it's a lot of -- a lot of juice.**

16 Q. Okay. That's fine. You've got to stay
17 here.

18 ACTING CHAIRMAN RODELIUS: Okay. Thank
19 you very much, Mr. Tobia. Can we -- we will have
20 public comments, we'll have comments from the
21 Board and the objectors' attorneys. I think we
22 should jump right into the objectors' attorneys at
23 this point and then we'll maybe take a ten-minute
24 break in about a half hour or so.

25 THE WITNESS: I'm going to shake it and

1 point it at Mr. Sasso.

2 MR. SASSO: That's okay. I got my eye
3 test today and I already failed.

4 MR. HALL: I see your arm looks a little
5 better this time.

6 MR. SASSO: It does. It's getting less
7 swollen. The glass is half full.

8 MR. HALL: I guess you didn't run into
9 me again, right?

10 CROSS-EXAMINATION

11 BY MR. SASSO:

12 Q. Speaking of pulling things out of the
13 air, Mr. Tobia, when you say tonight --

14 **A. Tobia. Tobia.**

15 Q. Tobia, excuse me.

16 **A. I'm sorry, go ahead.**

17 Q. Tobia.

18 -- that the panels cannot be seen on
19 this project and that's what the engineers
20 testified to, can you tell us what you're relying
21 on to make that statement?

22 **A. Sure. There were, Mr. Sasso, cross**
23 **sections done by Mr. Kennedy, and we all worked on**
24 **them. And testimony in July of 2014 by**
25 **Mr. Kennedy that said cross sections were**

1 examined. The conclusion was whether we add
2 plants to fence and berm through a variety of
3 cross sections, the panels would be shielded from
4 public view.

5 Q. From any -- any vantage point whatsoever
6 is what you're saying?

7 A. Yes. It's a good question. The
8 analysis -- I'm just going to draw a few lines on
9 the exhibit here.

10 Q. Sure, please.

11 A. There was one cut from Somerset down to
12 the corner. I think you remember some of these.

13 Q. Sure, I do.

14 A. There were a couple cut east to west --

15 Q. Sure.

16 A. -- through the site. I believe there
17 was one from Preston cut down to Meadow. And
18 there was a really valuable one cut from -- is it
19 the Forte residence? The Forte residence shown
20 just south of the intersection, Mr. Sasso, moving
21 through the farm field.

22 Q. And you also base that on the intimate
23 knowledge you have of the berms that are being
24 constructed as part of this project, correct?

25 A. Yes.

1 Q. Why don't you show us with that red pen
2 you have the berms on the left side of the project
3 where my client's property is located.

4 **A. So you're talking about lot 9 -- hold on**
5 **a second, I'm sorry. And there are no berms --**
6 **you're talking about this property line,**
7 **Mr. Sasso?**

8 Q. Sure. Sure.

9 **A. So that's a good question. There are no**
10 **berms over there because of the density of**
11 **existing plant material.**

12 Q. And not even plantings, correct? Is
13 that correct?

14 **A. That's correct.**

15 Q. So we're talking about the scrub brush
16 that was described by the engineers as being what
17 would block someone's view from that vantage
18 point, correct?

19 **A. And in that area hardwood plant material**
20 **also. Some taller trees in that area we thought**
21 **would do the job, yes.**

22 Q. I'm just wondering, sir, how from the
23 time Mr. Kennedy testified that he couldn't say
24 unequivocally that you wouldn't see the panels
25 that tonight you come to testify before the Board

1 and say that you couldn't see the panels from any
2 vantage point and yet you talk about some cross
3 sections at certain points around the property.

4 Let me ask you, sir, are you testifying
5 under oath today that if I walk the perimeter of
6 this property post-construction, I would not be
7 able to see a single solar unit?

8 **A. No.**

9 Q. Okay. Now, let me ask you this. In
10 connection with your review of the materials here
11 today, you did say before that you were not an
12 expert in terms of stormwater management.

13 Did I get that right?

14 **A. Correct.**

15 Q. Okay. How about with regard to solar
16 energy?

17 **A. So I am a planning expert. Solar is --**
18 **if you're asking me if I'm an expert in solar, the**
19 **answer is no.**

20 Q. Okay. How about your experience in
21 solar? Have you ever testified on behalf of an
22 application before with a solar gen -- or an
23 electrical generating plant of over 30,000 panels?

24 **A. So, yes. And one, which was the recent**
25 **one up in Peapack.**

1 Q. And how many years have you been in this
2 business?

3 **A. Thirty -- 34.**

4 Q. Okay. And when you come before this
5 Board and you say everything's okay, this is a
6 project that should get passed and it will be a
7 microscopic impact to the neighbors -- I believe
8 that's what you said -- can you tell us what
9 information you have with regard to the
10 reclamation of the solar materials at the, quote,
11 end of the job?

12 **A. So, no. We had a Mr. Rever, the solar**
13 **expert who did explain that. So it's outside of**
14 **my field. I can tell you quickly what he said**
15 **which was --**

16 Q. Well, I know what he says.

17 **A. Okay.**

18 Q. And they heard it and that's why I'm
19 asking the question.

20 **A. So then --**

21 Q. Okay?

22 **A. If you're asking me, I have nothing new**
23 **to add on that topic.**

24 Q. Okay. Do you have anything to add,
25 positive or negative, as to whether or not there's

1 any type of possibility of a toxic event, a
2 negative toxic event, a spill on this site in
3 connection with this project? Yes or no?

4 **A. No.**

5 Q. All right. In terms of your testimony
6 here this evening, tell us what you did review.

7 **A. So I've been on the job for two years**
8 **now.**

9 Q. Sure.

10 **A. As I said, multiple site inspections.**
11 **We reviewed the master plan, zoning ordinance,**
12 **solar ordinance, all the site plans and their**
13 **various revisions. I think I told you I did all**
14 **the -- read all the transcripts, attended the**
15 **hearings. And I want to emphasize walked this**
16 **site extensively to understand impacts.**

17 Q. Okay. So you didn't mention it, but
18 I'll ask you.

19 Did you review the two reports that were
20 issued by Mr. Banisch?

21 **A. Yes. I'm sorry, I forgot that. Yes.**

22 Q. And did you review all of those reports?
23 By that I mean comprehensively?

24 **A. There were three, not two, and the**
25 **answer is yes.**

1 Q. Okay. And in connection with his
2 reports, they were issued by him as the Bedminster
3 planner, correct?

4 A. Yes.

5 Q. And based on your experience in this
6 area, he's been the planner here for decades?

7 A. Pretty old guy.

8 MR. BANISCH: Hey.

9 Q. Is that a yes?

10 A. Yes.

11 MR. COLLINS: This line of
12 cross-examination must stop.

13 MR. SASSO: I'm not asking a woman her
14 age. I have broken knuckles that will attest to
15 that mistake.

16 Q. But, in any event, getting to the master
17 plan, which we'll talk about in a little bit, on
18 the master plan, you reviewed that too, right?

19 A. Correct.

20 Q. In fact, Mr. Banisch's name is on the
21 front page of the master plan on the bottom,
22 correct?

23 A. Yes.

24 Q. All right. When you talk about a "D"
25 variance based on your experience, you told us

1 that there were two prongs, correct?

2 **A. Yes.**

3 Q. That first prong dealt with the special
4 reasons, if you will?

5 **A. Yes.**

6 Q. All right. But we know in this case at
7 some point the legislature changed the definitions
8 in the MLUL, is that correct?

9 **A. Yes.**

10 Q. And that's in, 55D-4, to include solar
11 in the definition along with hospitals, for
12 instance, schools?

13 **A. True.**

14 Q. All right. I want to talk about
15 generally -- about special reasons. If you have a
16 special reason, for instance a hospital, I think
17 that's a good example, and it's cloaked with that
18 definition of being an inherently beneficial use,
19 if that application for the hospital comes in with
20 two hospitals already there, okay, and now a third
21 one down the street in a residential neighborhood,
22 let me ask you, in your opinion do you ever get
23 into the need issue? By that I mean although it's
24 not a permitted use but it's inherently
25 beneficial, but does the Board look at, hey, do we

1 need that?

2 **A. So it's an interesting question.**

3 **Generally, I don't. Okay? I do think a Board**
4 **could look at this and say, hey, we have two**
5 **hospitals. Do we need a third? I think that's**
6 **your premise. But generally I think, you know,**
7 **the law here has been simplified to ease the**
8 **burden on a use like a hospital. And right now**
9 **when you read that statute, Mr. Sasso, the statute**
10 **doesn't say, hey, the third inherently beneficial**
11 **use in has a higher burden of proof.**

12 **So I hope I've answered your question.**
13 **Maybe you can follow up if I didn't.**

14 **Q. Sure, absolutely. But there's been case**
15 **law that you've been aware of during your tenure**
16 **as a planner that kind of said that, right, even**
17 **post-Medici?**

18 **A. So you're going to have to be more**
19 **specific.**

20 **Q. Sure. In other words, besides the fact**
21 **that it's inherently beneficial, the Board can**
22 **look at other characteristics, like need for**
23 **instance. Three hospitals in a row.**

24 **A. I totally get it. Yes.**

25 **Q. Okay. Now, when we look at a "D"**

1 variance, even if a certain application is solar
2 energy, for instance, and we know that 40:55D-4
3 says that that's an inherently beneficial use on
4 its face, that's not the end of the evaluation for
5 the Board. That's the beginning, correct?

6 **A. Correct.**

7 MR. SASSO: At this time I'll pass this
8 to counsel too. This is 40:55D-70(d), which is a
9 section that we're talking about. I have enough
10 copies for everybody.

11 THE WITNESS: Thank you.

12 MR. HALL: Thank you.

13 (Pause)

14 BY MR. SASSO:

15 Q. All right. Are you with me?

16 **A. Yes.**

17 Q. Okay. It's a statute you're very
18 familiar with.

19 **A. Yes.**

20 Q. Right?

21 **A. Yes.**

22 Q. The first section talks about the power
23 that the Board has to grant a "D" variance. Would
24 you agree?

25 **A. Yes.**

1 Q. But that variance can only be granted if
2 the second part of the statute is complied with,
3 is that right?

4 A. Yes.

5 Q. And what does that say?

6 A. So the bottom paragraph -- was this
7 marked, by the way?

8 Q. No. It's a statute.

9 MR. HALL: It's a statute so I don't
10 think we need to mark it.

11 MR. COLLINS: It doesn't have to be
12 marked.

13 THE WITNESS: Okay. Okay. Thanks.

14 A. So the bottom paragraph of everything
15 you're looking at -- maybe I'll read it,
16 Mr. Sasso. Is that okay?

17 Q. Please do.

18 A. "No variance or other relief may be
19 granted under the terms of this section, including
20 a variance or other relief involving an inherently
21 beneficial use, without a showing that such
22 variance or other relief can be granted without
23 substantial detriment to the public good and will
24 not substantially impair the intent and the
25 purpose of the zone plan and zoning ordinance."

1 Q. Okay.

2 **A. And I assume, just for the record, that**
3 **it's your bold face on that last section?**

4 Q. That was mine.

5 **A. Yeah, okay.**

6 Q. Tell me if I'm paraphrasing it
7 correctly. The bottom line is you may be an
8 inherently beneficial use, but that doesn't mean
9 that you are entitled to an approval unless you
10 meet the second part?

11 **A. Yes.**

12 Q. And after Medici, there were several
13 other cases that dealt with the second prong, is
14 that right? In other words, Medici spoke to a
15 different burden of proof, but that dealt with the
16 issue of an inherently beneficial use not
17 complying with this second section. Would you
18 agree?

19 **A. You've got it backwards, but go ahead.**

20 Q. Okay.

21 **A. Yes, there's been a body of law since**
22 **Medici, but Medici didn't do the inherently**
23 **beneficial. That was five years later with Sica.**
24 **But, yeah, you're right. You know what happened**
25 **was Medici came along and all these other case**

1 law -- all this other case law kind of whittled
2 away at the strictness of Medici, is the way I
3 would put it.

4 Q. And then that directly affected cases
5 involving inherently beneficial uses?

6 A. Yes. And, if I may, lessened the burden
7 on them in general.

8 Q. On a definition of inherently
9 beneficial?

10 A. That's one.

11 Q. Right.

12 A. Yeah.

13 Q. But with regard to the second prong, it
14 did not reflect any change.

15 A. And that's why you heard my testimony.
16 You're completely right.

17 Q. And I did. That's why I'm going to ask
18 you the basis for that testimony that in this case
19 33,960 panels in the middle of a farming and
20 residential zone here in Bedminster somehow
21 comports with -- I think you before said there
22 were things in the master plan that actually
23 supported this application, correct?

24 A. Yes.

25 Q. And you read Mr. Banisch's report, as

1 you said, correct?

2 **A. Yes.**

3 Q. All right. Let's talk about farmland.

4 In New Jersey with regard to solar
5 energy, would you agree with me or not that the
6 state study that Mr. Banisch refers to
7 specifically states that farmland should not be
8 utilized and given up in exchange for solar
9 energy?

10 **A. So I probably wouldn't agree with you.**
11 **So remember this distinction between farmland,**
12 **nonfarmland and so on is really not my field of**
13 **expertise. There is some litigation that supports**
14 **your remark, which is mostly about grid solar**
15 **rather than net solar, if you will.**

16 Q. I didn't make that distinction, though,
17 as you remember.

18 **A. I'm making it.**

19 Q. But you're here to answer my questions.

20 MR. HALL: No, he's answered it. You
21 just didn't like the answer.

22 MR. SASSO: Negative.

23 MR. HALL: Go ahead --

24 MR. SASSO: I did not distinguish --

25 MR. HALL: But he did.

1 THE WITNESS: I am --

2 (Indiscernible crosstalk; Reporter
3 requests one speaker)

4 MR. HALL: You can't make him answer
5 that way. I'm sorry.

6 MR. COLLINS: One speaker. There was an
7 objection. Let's take a minute and just maybe go
8 back to the question.

9 MR. SASSO: Sure.

10 MR. COLLINS: Maybe we can just read the
11 question.

12 MR. SASSO: I'll rephrase the question.

13 BY MR. SASSO:

14 Q. Based on what you've read, including the
15 energy master plan for the State of New Jersey,
16 would you agree with me that New Jersey treats the
17 use of farmland being used up by solar facilities
18 different than other land?

19 **A. I never read the state energy master**
20 **plan.**

21 Q. Well, you told us that you read
22 Mr. Banisch's report, right? Do you have that
23 handy?

24 **A. Yes.**

25 Q. Why don't you go to his report.

1 **A. Yes. So I'm on September 29th, which I**
2 **believe was --**

3 Q. 2014?

4 **A. Yes.**

5 THE WITNESS: That's the last report,
6 Frank?

7 MR. BANISCH: That is.

8 **A. Right. Is that what you want?**

9 Q. Yes, sir.

10 **A. Go ahead.**

11 Q. In his report -- and I'll tell you the
12 exact page. Let me just find it. He refers to
13 the New Jersey Energy Master Plan, correct?

14 **A. Page, please?**

15 Q. Bear with me.

16 **A. Okay.**

17 MR. BANISCH: Page 9.

18 THE WITNESS: Page 9, 5.2.

19 MR. COLLINS: Page 9, 5.2.

20 Q. 5.2 speaks to the New Jersey Energy
21 Master Plan.

22 Do you see that?

23 **A. Yes.**

24 Q. In there he says "In order to meet the
25 burden of proof regarding the public good,

1 negative criteria, the applicant needs to address
2 the considerations in the New Jersey Energy Master
3 Plan and its potential to locate solar energy
4 infrastructure on rooftops and parking areas
5 rather than a scenic prime farmland. The public
6 good proofs must also address the impacts on the
7 neighborhood."

8 **A. Right. So, I think -- that's a**
9 **question?**

10 Q. The question is did you then review the
11 New Jersey Energy Master Plan?

12 **A. No. So what happened, if I may,**
13 **Mr. Sasso --**

14 Q. I just simply asked you if you reviewed
15 it.

16 **A. I can clarify better -- if you want me**
17 **to say no, I'll just say no.**

18 Q. No, I want you to tell me the truth. So
19 if it's no --

20 MR. HALL: Wait a minute. You can't
21 accuse him of not telling the truth.

22 MR. SASSO: He wants to answer another
23 question.

24 MR. HALL: That's an improper question.

25 MR. SASSO: Gary, he wants to answer

1 some other question.

2 MR. HALL: No, no, you said you can't
3 not tell the truth. You can't say that to my
4 witness.

5 MR. SASSO: He said he wanted to
6 clarify. You either read it or you didn't read
7 it. We'll ask him again in fairness.

8 BY MR. SASSO:

9 Q. Did you ever read the 2011 New Jersey
10 Energy Master Plan?

11 **A. So the answer is no.**

12 Q. Okay. When you saw that comment by
13 Mr. Banisch, what did you do, if anything, to
14 determine what the contents of the statewide
15 energy master plan were?

16 **A. We relied -- and this was a deliberate**
17 **decision -- on our first witness on this who is**
18 **the expert on that master plan, that being Tom**
19 **Lynch, to have covered that topic through his**
20 **expertise. My role was zoning ordinance, master**
21 **plan, Municipal Land Use Law.**

22 **So we just simply, to answer your**
23 **question, assigned it to another member of our**
24 **team.**

25 Q. So he was instructed to read the

1 statewide master plan?

2 **A. Mr. Lynch lives with it.**

3 Q. Okay.

4 **A. Okay?**

5 Q. Do you know what it says even
6 paraphrased from him?

7 **A. So I know broadly, okay, that three of**
8 **the five overarching goals of that document**
9 **encourage solar.**

10 Q. So I'll read for you from page 107 from
11 that master plan.

12 "Although a number of utility scale
13 solar installations have been proposed for and
14 installed on what were previously working farms,
15 the Christie administration does not support the
16 use of ratepayer subsidies to turn productive
17 farmland to grid-supply solar facilities. To date
18 public and private entities in the Garden State
19 has spent over \$1.4 billion to preserve almost two
20 thousand farms covering nearly two hundred
21 thousand acres. The policy of encouraging the
22 development of renewable resources should not
23 impact the preservation of open space and
24 farmland.

25 "While the Christie administration will

1 not presume to limit the disposition of private
2 property, New Jersey should not subsidize the loss
3 of productive farmland. Rules proposed by the
4 State Agricultural Development Commission under
5 the 2009 Farmland Assessment Act update, but not
6 yet finalized, should provide safeguards for
7 property that's been designated as preserved
8 farmland. Other safeguards shall be implemented
9 as experience dictates."

10 MR. HALL: Is there a question or are
11 you just reading that into the record?

12 MR. SASSO: Well, if you perhaps would
13 allow me to ask a question.

14 MR. HALL: Excuse me. I thought you
15 were done.

16 BY MR. SASSO:

17 Q. Were you aware of that policy?

18 **A. No, but the policy, if I may, talks**
19 **about grid. The first sentence.**

20 Q. Absolutely. What do we have here, by
21 the way.

22 **A. We have a net meter job for Sanofi.**

23 Q. In what town?

24 **A. Bridgewater.**

25 Q. Now, would you agree with me in terms of

1 the cases that have evolved through the years and
2 going through Medici that most of the uses that
3 are declared to be inherently beneficial have been
4 charitable-type care?

5 **A. Have been charitable?**

6 Q. Charitable.

7 **A. No. Sica is directly on point with**
8 **that. Many are, you're correct. Sica in its**
9 **decision, if you get into the weeds of that**
10 **decision, says it doesn't have to be nonprofit.**

11 Q. That's not the question I asked you,
12 sir.

13 **A. Say it again, please. Repeat your**
14 **question.**

15 Q. Most of the uses that have been declared
16 to be inherently beneficial by our courts have
17 dealt with charitable-type institutions?

18 **A. Emphasis on the word "most" and then I'd**
19 **agree with your statement. Yep.**

20 Q. Okay. What do we have here? Is this a
21 for-profit enterprise?

22 **A. Yes.**

23 Q. Is any of the energy that's being
24 created by any of the 33,900 solar panels, will it
25 be directed and used in Bedminster at all?

1 **A. Remember, it's now 33,000, I want to**
2 **correct you on that, not 33,900.**

3 Q. Go ahead.

4 **A. We lost nine hundred because of the**
5 **stormwater adjustments.**

6 Q. Okay.

7 **A. So the new numbers, folks, is 33,000.**

8 **Was the question will it be -- some of**
9 **it be directed to --**

10 Q. Will it any of it be used in Bedminster?

11 **A. Not directly.**

12 Q. Okay. And, in fact, Sanofi is a
13 for-profit corporation, correct?

14 **A. Yep.**

15 Q. What empirical proof do you have, if
16 any, to tell this Board as to whether or not the
17 panels could be set on Sanofi's roofs? Have you
18 ever directly had communication with the owners of
19 the property?

20 **A. No.**

21 Q. You've been -- you said you walked this
22 site quite a bit, right?

23 **A. Correct.**

24 Q. Did you also go over to Sanofi, like I
25 did?

1 **A. Yes.**

2 Q. Describe the buildings for the Board.

3 **A. So there are four buildings over there.**
4 **They're tall, typical corporate office buildings**
5 **with a lot of surface parking.**

6 Q. Okay. Surface parking that could be
7 covered parking similar to the parking at KDC with
8 solar panels above, correct?

9 **A. If a deal, you know, with ownership**
10 **could be worked out, that is possible, just the**
11 **way you see panels out here in the parking lot of**
12 **this building.**

13 Q. Or panels actually put on those huge
14 buildings themselves, would you agree?

15 **A. So -- and, remember, I'm trying to help**
16 **you, okay?**

17 Q. Don't --

18 **A. I don't do solar jobs. Okay?**

19 Q. Okay. Just based on what you've seen.

20 **A. Yeah. Just remember it's not as easy to**
21 **put panels on a roof as you think it is. Okay?**
22 **There's equipment up there, there's penetration**
23 **through the roof, there's insurance issues to come**
24 **in. So maybe that could happen. I think you're**
25 **right. Maybe it could happen in the form of**

1 **canopies in the parking lot. I think you're**
2 **right. But without willing ownership -- and this**
3 **runs back to Mr. Lynch's testimony nearly two**
4 **years ago -- you cannot do anything.**

5 Q. Okay. Above and beyond that in terms of
6 driving around, as you did probably at Sanofi,
7 there's a lot of ground that's basically free,
8 correct? It's a large campus?

9 A. **It's a large campus. It is encumbered**
10 **in part by the parking lots you mentioned, by**
11 **wetlands, and by I think one other approval on the**
12 **property. So you look at it from an aerial photo,**
13 **I think you're right.**

14 Q. It's huge, right?

15 A. **Looks like there's a lot of stuff going**
16 **on. It's all out in terms of available sites**
17 **mostly because of ownership, but also because of**
18 **environmental.**

19 Q. All right. In talking about zones that
20 are appropriate as a New Jersey licensed planner,
21 were you aware of the statute that speaks to
22 industrial zones who have 20 or more contiguous
23 acres?

24 A. **Yes.**

25 Q. Let me show this to you.

1 (Pause)

2 Q. Sir, this is 55D-66.11, correct?

3 **A. Yes.**

4 Q. And this specifically addresses zones, a
5 particular zone, that automatically pursuant to
6 this statute is ripe for location of solar panels,
7 is that right?

8 **A. Yes.**

9 Q. And the legislature did this, correct?
10 This was not done by a court?

11 **A. True.**

12 Q. And states that "A renewable energy
13 facility on a parcel or parcels of land comprising
14 20 or more contiguous acres that are owned by the
15 same person or entity shall be a permitted use
16 within every industrial district of the
17 municipality." That's what the statute says?

18 **A. Yes.**

19 Q. And would you agree with me the footnote
20 to that would be even if the town in that
21 industrial zone didn't allow solar energy
22 facilities?

23 **A. That's what that -- so what that's doing**
24 **is taking away that power in this limited instance**
25 **from the town's power to zone for its industrial**

1 **zones .**

2 Q. And you would agree with me, the
3 legislature then by reason of passing that law
4 made it pretty clear, look, if it's an industrial
5 zone and you have 20 acres, we say that's
6 suitable for a renewable energy facility? Would
7 you agree?

8 **A. Yes .**

9 Q. There's other legislation that I found
10 that deal with farms and protection of farmland.

11 Now, understanding the difference
12 between farmland preserved and private
13 ownership -- because you are private ownership,
14 right? The Kirby zone -- the Kirby trust owns the
15 property?

16 **A. Yes .**

17 Q. But I understand that difference. But
18 in looking at at least the legislative intent, let
19 me show you 4- -- or 4:1C-32.4. I'd just ask you
20 to take a look at that.

21 **A. Okay .**

22 THE WITNESS: So we're not marking any
23 of these, Tom?

24 MR. COLLINS: No. Statutes are
25 automatically referenced.

1 THE WITNESS: Okay.

2 MR. COLLINS: You can just talk about
3 them by -- if you think it's not the right
4 version, you can tell us.

5 THE WITNESS: No, no, I just want to
6 make sure you're okay.

7 (Pause)

8 BY MR. SASSO:

9 Q. Would you agree with me that that
10 statute provides that if it's farmland preserved
11 land, the only solar that is allowed in New Jersey
12 on farmland preserved land is just for use on that
13 property? In other words, similar to the new
14 ordinance that Gary spoke to before.

15 **A. So in all fairness, Mr. Sasso, this is**
16 **one -- you're asking me to read a two-page**
17 **ordinance --**

18 Q. I'm sorry. Please, take your time.

19 **A. This is not one I'm familiar with. The**
20 **others I kind of have committed to memory.**

21 Q. No, no, no. Not a problem.

22 **A. First of all, we're not preserved**
23 **farmland.**

24 Q. I understand that. I said that already.
25 We're talking about farmland in general, like I

1 said before, without distinction.

2 **A. So you're talking about just farmland in**
3 **general.**

4 Q. Yes.

5 **A. And so -- question, I'm sorry?**

6 Q. Sure. Are you done reading it? I
7 thought you weren't done reading it.

8 **A. No, I haven't even started.**

9 Q. Okay. Just read it.

10 ACTING CHAIRMAN RODELIUS: I'll tell
11 you what? You know what? Can we take a break
12 now?

13 MR. SASSO: Great time.

14 ACTING CHAIRMAN RODELIUS: At quarter of
15 we'll come back. Ten minutes.

16 (Whereupon, a recess is taken.)

17 ACTING CHAIRMAN RODELIUS: Okay. We're
18 back.

19 Have you had a chance to go through
20 that, Mr. Tobia?

21 THE WITNESS: Memorized it.

22 ACTING CHAIRMAN RODELIUS: Good.

23 BY MR. SASSO:

24 Q. Could you repeat paragraph -- no, I'm
25 only kidding.

1 Just generally, would you agree with me
2 that New Jersey, our state, treats preserved
3 farmland as being something that should not have
4 solar energy unless it's a net meter situation
5 used for the farm? Would you agree with me?

6 **A. That's what that says.**

7 Q. Okay. Now, we started talking about the
8 negative criteria, and I told you I would go back
9 to that. And I want to -- I want to talk about
10 the fence, this fence.

11 Give us a description of the fence and
12 tell us about how many feet it runs along the
13 property.

14 **A. A 7-foot-high fence, Mr. Sasso,**
15 **chain-link. You heard about the fabric. The**
16 **fabric runs -- the fabric runs around areas of**
17 **heightened concern for neighbors. So if you**
18 **follow my pointer, please, it runs along the**
19 **northern edge of the westerly facility and wraps**
20 **around slightly to the south. It runs along the**
21 **entire north edge of the easterly facility and**
22 **then, because of our concern about Country Club**
23 **Road, it follows a path on the southeast corner of**
24 **the easterly cluster, and then returns and runs**
25 **due west along the entire rear of that cluster.**

1 Q. Okay. Now, just so this is clarified,
2 are you showing us where the fence is or the fence
3 with the material?

4 **A. The fence with the material.**

5 Q. Okay. There's additional fence that has
6 no material. Could you outline that for the
7 board?

8 **A. It encircles both clusters in their**
9 **entirety.**

10 Q. Okay. Can you just again just give us a
11 quick indication of where we're talking about?

12 **A. So a fence would encircle the easterly**
13 **enclosure.**

14 Q. Right.

15 **A. And then a fence would encircle the**
16 **entirety, as I said, perimeter of the west.**

17 Q. Okay. And in terms of the proximity to
18 my client's lot, Mr. Forbes, on that corner is
19 there going to be any fabric there?

20 **A. No.**

21 Q. And you spoke about what kind of trees
22 being located in that area?

23 **A. So, the gentleman is talking about the**
24 **westerly edge of the property. Generally what you**
25 **find back there are mostly secondary growth.**

1 **Cedars is the predominant plant material back**
2 **there, 15, 20 feet high on our property.**

3 Q. We're not talking about hard woods?

4 **A. Mostly not.**

5 Q. Right.

6 **A. You'll see a couple scattered in there.**

7 Q. No, I remember what Ron told us.

8 **A. Right.**

9 Q. Now, in terms of the plantings, tell us
10 where that ends in that area. So let's take the
11 back line of the solar array section closest to my
12 client's property. Can you tell us where the
13 plantings end?

14 **A. So basically I'm going to pull out the**
15 **map to answer this exactly for you, but basically**
16 **they run entirely along the northerly property**
17 **line. And you can see it on here if you have an**
18 **eagle eye, the black line running along the**
19 **entirety of the westerly cluster thus and ending**
20 **near the northeast corner of the subject property.**
21 **And they do not return southward along the common**
22 **property line with your lot 9, Mr. Forbes'**
23 **property to the west.**

24 Q. What is there to hide the solar arrays,
25 if you know? Because you walked it many times.

1 **A. There's the fence and there's just a lot**
2 **of existing plant material. And then when you get**
3 **on the parcel your client owns, that just appears**
4 **to be solid woodlands.**

5 Q. Okay. And you walked onto that lot
6 also?

7 **A. No.**

8 Q. Oh, okay. When you're talking about --
9 when you're talking about the negative criteria
10 and you talked about a microscopic impact on the
11 neighbors, what type of neighborhood is this?

12 **A. So it varies from single-family**
13 **residential, which is mostly what you see to the**
14 **north, to scattered residential, which is mostly**
15 **what you see south and west.**

16 Q. Any commercial applications whether
17 they're nonconforming or conforming?

18 **A. Did you say commercial?**

19 Q. Yes, sir.

20 **A. Commercial properties you mean, land**
21 **uses?**

22 Q. Commercial uses, yes.

23 **A. None that jump out at me, no.**

24 Q. For instance -- and you went to Sanofi
25 like I did. If you go from Sanofi and then go to,

1 as the crow would fly, across 287 and then go to
2 this area, would you agree with me that once you
3 hit 287, that's it, it goes to residential?

4 **A. Yes.**

5 Q. Have you ever been a planner for a
6 municipality?

7 **A. Many years ago I did municipal work. I**
8 **have not done any in approximately 15 years.**

9 Q. Okay. But generally in your role as a
10 planner both on behalf of a town or on behalf of
11 an applicant includes a review of the zoning
12 ordinances in that particular town, would you
13 agree?

14 **A. Yes. Yes.**

15 Q. Okay. When a town has a coverage
16 ordinance and a town has an impervious coverage
17 ordinance, tell us, generally, what does the
18 coverage ordinance speak to?

19 **A. So in every town the correct answer is**
20 **it depends on definitions. Okay? Every town**
21 **changes as you know. Coverage can mean building**
22 **coverage or it can mean total coverage, meaning**
23 **building plus paving and so on.**

24 Q. But that would be impervious, would you
25 agree with me?

1 **A. The latter would be impervious, yes.**

2 Q. So you have to listen to my question.

3 Are you familiar with towns that have
4 ordinances that separate out coverage from
5 impervious coverage?

6 **A. Yes.**

7 Q. Would you say or agree with me that
8 that's more than half of the municipalities in
9 this area?

10 **A. No.**

11 Q. Okay. What percentage would you
12 attribute?

13 **A. I wouldn't hazard it. The main --**

14 Q. Go ahead.

15 **A. The main control, Mr. Sasso, is**
16 **impervious. That seems to be of greater import to**
17 **most towns. And there are towns who try and**
18 **cover -- can coverage also by what I call building**
19 **coverage, which means it's how big buildings get**
20 **relative to the size of the site.**

21 Q. Right, which is why I'm asking that
22 question.

23 When they do have in a municipality a
24 coverage ordinance, okay, does that control, in
25 essence, the intensity of the construction and

1 improvements on the site?

2 **A. That's one major control, yes.**

3 Q. Okay. In this case with regard to
4 Bedminster's ordinance, does it refer to both
5 coverage and impervious coverage or not?

6 **A. So in our town here we have lot
7 coverage, which is what you and I are generally
8 describing as the nonbuilding coverage, total
9 coverage. That's the 5 percent control.**

10 **The other part of your question was
11 what, please?**

12 Q. No, it's really that.

13 **A. Yeah.**

14 Q. In other words, the lot coverage section
15 is -- isn't addressed by impervious? Is that what
16 you're saying?

17 **A. It is.**

18 Q. Okay. Because the definition of
19 coverage in this case includes impervious.

20 **A. That's exactly right, yes.**

21 Q. Okay. Now, you spoke to a state statute
22 which exempts solar panels from any calculation of
23 a certain kind of coverage.

24 Isn't it a fact that 55D-38.1
25 specifically only refers to impervious surface or

1 impervious cover?

2 **A. That is correct.**

3 Q. Okay. In this case if we go by the
4 ordinance, and you did provide some testimony as
5 to whether you thought that the engineers'
6 definition, he interpreted it one way versus
7 another, what are the numbers for this project
8 versus what the ordinance allows?

9 **A. Five percent's the control. 3.59. 3.59**
10 **is the control if you exempt solar panels.**

11 Q. Well, that's not -- okay. Let's not
12 exempt solar panels because that's not what the
13 statute says because it talks -- it speaks to
14 coverage. And I'm asking you, if you include
15 the solar panels, what is that number versus
16 the number provided for in Bedminster's
17 ordinance?

18 **A. So in the Bedminster ordinance, 5**
19 **percent required with panels, which was your**
20 **question, 15.9 percent would be the coverage**
21 **requested.**

22 Q. And are you saying to the members of
23 this Board that that's a de minimis difference --

24 **A. No.**

25 Q. -- in terms of the variance?

1 **A. No.**

2 Q. How many percent are you over over what
3 is allowed?

4 **A. In absolute terms, it's 10.9 percent.**

5 Q. Okay. Based on a fix of 5, correct?

6 **A. Yes.**

7 Q. All right. So you're over twice what is
8 allowed in that zone, would you agree with me?

9 **A. No. It's three times.**

10 Q. Okay. That's why I said over twice.
11 But the --

12 **A. It's over three when you -- it's 15**
13 **times five. That's three.**

14 Q. Absolutely.

15 **A. Okay.**

16 Q. Now, with regard to the coverage that
17 you're talking about, is there any exemption that
18 you found under Bedminster's ordinance that would
19 allow you to have over three times the amount of
20 coverage?

21 **A. So the answer is no. The only way it**
22 **would be allowed is through the variance**
23 **procedures that you and I have been talking about.**

24 Q. Okay. That variance procedure as we
25 talked about earlier includes a specific

1 requirement and the burden is on the applicant, is
2 it not, to satisfy the second prong?

3 **A. Yes.**

4 Q. In support of your testimony, you relied
5 on the Medici case, which is a New Jersey Supreme
6 Court case at 107 New Jersey 1. In that case, on
7 pages 22 and 23, it says "The first prong of the
8 negative criteria requires that the variance can
9 be granted without substantial detriment to the
10 public good. In this respect the statutory focus
11 is on the variance's effect on the surrounding
12 properties."

13 Would you agree with that statement?

14 **A. Yes. Only Medici does not apply, but**
15 **more or less the identical language is in the Sica**
16 **case which is operative.**

17 Q. Okay.

18 **A. So same basic premise.**

19 Q. Okay. The same issue, the same thing?

20 **A. Yes.**

21 Q. And that's a specific burden or a
22 finding that the Board has to make? Not a burden.

23 **A. Yes.**

24 Q. And the burden is on the applicant?

25 **A. Yes.**

1 Q. In Medici, it goes on to talk about
2 "whether or not the granting of the variance will
3 cause such damage to the character of the
4 neighborhood as to constitute substantial
5 detriment to the public good."

6 Would you agree with me that analysis
7 applies here?

8 **A. Yes.**

9 Q. Okay. And when you look at the analysis
10 as a planner for negative criteria, what do you
11 look at from the town's standpoint to determine
12 what the intent of the zoning ordinance is?

13 **A. So now we're talking about kind of the**
14 **second prong of the second test, right?**

15 Q. Yes.

16 **A. Intent and purpose of the zoning**
17 **ordinance and zone plan, right? Zone plan and**
18 **zoning ordinance. And so I look at a number of**
19 **things. I've mentioned them. The zone says in**
20 **this case you need big properties with big**
21 **setbacks. Okay? That's one of the things that**
22 **contributes to rural character in the zone.**

23 And I don't want to go through the
24 merits of it again too much because you have
25 questions, but we do that. Okay? We have a big

1 **piece with big setbacks.**

2 Q. Well, they speak to use, right?

3 **A. Of course.**

4 Q. What is the use as described in the
5 master plan?

6 **A. I don't understand the question.**

7 Q. In other words, they have certain uses
8 that are the uses that they envision being
9 utilized in the zone?

10 **A. Yeah, that's real -- I think your**
11 **question is what do the zone -- what are the uses**
12 **articulated in the zoning ordinance --**

13 Q. For Bedminster.

14 **A. Okay. You said master plan. Zoning**
15 **establishes the permitted uses. I went through**
16 **those before. Single-family homes, ag uses,**
17 **schools, houses of worship, golf courses were many**
18 **of the ones I mentioned.**

19 Q. But what I was actually asking about was
20 the master plan. You reviewed the master plan.

21 Is there a discussion in there in terms
22 of what the township expects the uses to be in
23 that area?

24 **A. The master plan is complementary of the**
25 **zoning ordinance and vice versa. It mentions**

1 **those uses and more broadly preserving the rural**
2 **character of the area.**

3 Q. Okay. You also indicated to us that --
4 you spoke about soils rather quickly, Type A
5 soils.

6 Could you elaborate on what research you
7 did with regard to any designation of soils on the
8 Kirby property as a farm?

9 **A. I did no soil analysis. It's not my**
10 **field. I've never done them.**

11 Q. Well, regardless, are there from either
12 the state or the county's standpoint maps that
13 speak to farming soil within a district?

14 **A. The only ones I know of are shown in the**
15 **local document, the local master plan.**

16 Q. And in this case why don't you tell the
17 Board what efforts you made, if any, to determine
18 if there was a state or county plan that
19 identified the value of the soils on the Kirby
20 Farm.

21 **A. None.**

22 Q. Did you see that notation in
23 Mr. Banisch's report?

24 **A. About?**

25 Q. Farm soils.

1 **A. Yes.**

2 Q. You read it and then you didn't do
3 anything about it in terms of research, is that
4 accurate to say?

5 **A. No.**

6 Q. Then tell us what you did.

7 **A. That -- first of all, I read it.**
8 **Secondly, as I explained, that's not my field.**
9 **Soils analysis, farmland analysis, that's not what**
10 **I'm qualified to do. I did in the master plan**
11 **look at Figure 9, which does map farmlands, okay,**
12 **and it's a helpful document. And Figure 12, which**
13 **maps forested areas in the community. It's also**
14 **helpful.**

15 **And so we talked about this as a team.**
16 **And I commented on what I could based on what I**
17 **see happening on this site to assess those**
18 **concerns, especially Mr. Banisch's concerns about**
19 **farmland preservation.**

20 Q. Well, he's a planner, correct?

21 **A. Yes.**

22 Q. He's Bedminster's planner?

23 **A. He's what?**

24 Q. Bedminster's planner.

25 **A. Yes.**

1 Q. He's the town planner.

2 **A. Yes.**

3 Q. And he rendered a report in connection
4 with this case about your client's application.

5 Would you agree with me?

6 **A. Yes.**

7 Q. In there one of the things he speaks to
8 is the quality of the soils that are located on
9 the Kirby Farm.

10 **A. Right.**

11 Q. Did you do anything by way of your own
12 investigation to determine if what he was saying
13 was true or not?

14 **A. No.**

15 Q. Let's talk about the landscape buffer.
16 And the landscaping, I think you mentioned
17 flowers, mountain flowers at some time, about --
18 underneath the arrays perhaps?

19 **A. I said wildflowers.**

20 Q. Wildflowers, yes.

21 And you said that your client was an
22 expert in the field of plantings of wildflowers
23 under the arrays.

24 **A. I don't think I said expert. So I've**
25 **seen two of their larger facilities where they've**

1 **planted wildflowers and they've got it going. I**
2 **mean, they have abundant, successful plant**
3 **material under these panels that vary from flowers**
4 **to grasses.**

5 Q. How many projects have they done, by the
6 way?

7 A. **I don't know.**

8 Q. Did you ever ask them?

9 A. **No.**

10 Q. And you only saw two?

11 A. **So I saw two, you know. I said what**
12 **compares, okay, to Bedminster. You know, give me**
13 **some ideas. And those are two I investigated.**

14 Q. I know, but you told us they were an
15 expert and you said that you've only seen two.
16 Which two have you seen?

17 A. **The Lawrenceville facility down near**
18 **Lawrenceville School, and you heard talk of the**
19 **ImClone facility on Route 202 in Branchburg,**
20 **pretty close by. And those are the two I**
21 **investigated.**

22 Q. Did you go to the Middlesex County
23 Correctional facility?

24 A. **No.**

25 Q. And that was right on Route 1 when you

1 came up from the Lawrenceville School, would you
2 agree with me?

3 **A. No, I came up 206.**

4 Q. You did. Okay. You like the traffic.

5 **A. I like avoiding Route 1.**

6 Q. All right. So you had no idea what the
7 condition of the ground is under those panels?

8 **A. Only because of the transcripts. I have**
9 **not seen them.**

10 Q. Okay. Speak to me about the zone in
11 question that we're talking about and how, in your
12 opinion, a 30,000 panel energy-producing solar
13 plant fits in this zone in Bedminster without
14 damaging or causing any substantial damage to the
15 neighborhood, this residential neighborhood.

16 MS. DONATO: Excuse me.

17 MR. SASSO: What's happening is Mr. Hall
18 and the witness throughout the night, you know,
19 they talk to one another --

20 MR. HALL: I object to that statement.

21 MR. SASSO: -- which is inherently
22 objectionable.

23 THE WITNESS: First of all --

24 MR. SASSO: Okay? He's been doing it
25 all night. I'm trying to be nice with Mr. Hall --

1 MR. HALL: He hasn't been doing it all
2 night.

3 MR. SASSO: -- who blows his stack all
4 the time at me, but, you know, the bottom line is
5 what's fair is fair. He doesn't need to be
6 coaching his witness, you know, while I'm
7 conducting my cross-examination.

8 MR. HALL: I object to that statement.
9 It's false.

10 Mr. Tobia, tell us what you just asked
11 me.

12 MR. SASSO: Mr. Chairman, you are the
13 one in power here with the consent of your
14 attorney. I didn't ask Mr. Hall to now conduct a
15 direct examination of his client.

16 MR. HALL: You accused me of coaching my
17 witness which I take offense at.

18 MR. SASSO: You've been talking to him
19 all night, Gary.

20 (Indiscernible cross-talk; Reporter
21 requests one speaker.)

22 MR. SASSO: You've been talking to him
23 all night.

24 MR. HALL: No, I haven't. You're lying.

25 MR. SASSO: I'm lying?

1 MR. HALL: Yes. I haven't been talking
2 to him all night.

3 MR. SASSO: Ms. Donato, what have you
4 observed all night?

5 MS. DONATO: I've observed repeated
6 interchanges of conversation. I wouldn't say all
7 night, but I would say it was repeated.

8 ACTING CHAIRMAN RODELIUS: Tom, is
9 this -- do you have any --

10 MR. COLLINS: It should be -- we should
11 continue. It's a legitimate objection by
12 Mr. Sasso. They should not be communicating with
13 one another.

14 ACTING CHAIRMAN RODELIUS: All right,
15 Mr. Sasso. Thank you.

16 MR. COLLINS: But it's also not as
17 formal as a courtroom, so let's try to move on.

18 MR. SASSO: Okay.

19 BY MR. SASSO:

20 Q. Would you agree with me in terms of your
21 review of the master plan here in Bedminster that
22 it indicates that the R-10 district was created in
23 response to a broad range of local objectives for
24 the countryside portions of the municipality?
25 Would you agree?

1 **A. Yes.**

2 Q. And it's your testimony to this Board
3 that this 30,000 panel solar energy facility would
4 not be a detriment to that purpose in the R-10
5 zone? Is that what you're saying?

6 **A. It's 33,000 panels.**

7 Q. 33,000 panels?

8 **A. It's 33, please. It's not 30.**

9 Q. You just knocked off the 960 because of
10 the drainage situation, so go ahead.

11 **A. So 33's operative, okay? So, repeat --**
12 **I'm sorry, can you please repeat the --**

13 Q. Are you saying to this Board that based
14 on that purpose of the R-10 zone, that a 33,000
15 solar panel farm is consistent and will not injure
16 the intent and purposes of that zone?

17 **A. Yes.**

18 Q. Okay. In terms of the requirements of
19 the R-10 zone vis-a-vis density, did you determine
20 when you reviewed the master plan why it was that
21 they would require such large lots based on the
22 intent that was spelled out in the master plan?

23 **A. So that is explained in the master plan.**
24 **Excuse my noise here. And, you know, the broad**
25 **reasons were to preserve rural character, to**

1 **preserve farmland, to protect environmental**
2 **features, to protect streetscapes, vistas, and so**
3 **on.**

4 Q. Okay. Well, let's add another one. How
5 about to preserve farmland and promote the
6 industry of farming?

7 **A. I said that in so many words, yeah.**

8 Q. In so many words? Okay.

9 Tell us what it is about this 33,000
10 panel solar plant that preserves farmland and
11 promotes the industry of farming.

12 **A. So it, first of all, holds steady, if**
13 **you will, the amount of ag production on the site,**
14 **meaning that front portion near the intersection,**
15 **it continues the important visual, okay, of**
16 **agricultural activity along Country Club Road. A**
17 **little bit toward Meadow Road also, but mostly**
18 **Country Club. It removes no soil, okay? No soil**
19 **export. And it recognizes, Mr. Sasso, that the**
20 **back half of this site is not in prime**
21 **agricultural activity now and has not been for**
22 **years.**

23 Q. Okay. Do you know the reason why that
24 is?

25 **A. No.**

1 Q. Did you look into it?

2 **A. We asked the person now haying this**
3 **piece in part of our preparation why, and the**
4 **answer was it's been in woodlands for years**
5 **because it's not worthy of being farmed.**

6 Q. Do you have any investigation, any facts
7 upon which you can rely to support a statement
8 before this Board that that farm with the
9 designation of soils that you see in the master
10 plan cannot be fully utilized for farming if an
11 active farmer went in there next week?

12 **A. I don't think anyone can do that without**
13 **investigating the soils on the site and I have**
14 **not --**

15 Q. Well, you haven't --

16 **A. If I may. And I have not done that.**

17 Q. But you're going to come here and say
18 that with regard to this farm, it preserves
19 farming based on the little bit of hay that's cut
20 in the area alongside the roadway. That's what
21 you're telling us?

22 **A. Good question. When you say a "little**
23 **bit of hay," that has been the activity on the**
24 **site for a long time.**

25 Q. Right.

1 **A. And I guess I'm saying --**

2 Q. The real question is whether or not
3 there can be significant farming on the site and
4 whether you can even answer that question before
5 this Board.

6 **A. So I think the good answer to your
7 question is I cannot answer that question.**

8 Q. Let me ask you this: With regard to the
9 district that it's in, do you know anything about
10 the Somerset County Agricultural Development
11 Board, CADB?

12 **A. No.**

13 Q. Did you contact them at all in
14 connection with your evaluation of the use
15 possibilities for the Kirby Farm in connection
16 with this application before you came in here
17 tonight to testify?

18 **A. No.**

19 Q. You told us that you looked at the
20 attachments to Mr. Banisch's report.

21 Did you see that in terms of the
22 particular soil that's on this site that it's
23 highly -- it's characterized as highly productive
24 farmland soils?

25 **A. Yes, I saw that.**

1 Q. Okay. And that meant nothing to you in
2 terms of you rendering the opinion that you gave
3 us tonight, correct?

4 **A. No, that's unfair. I respect his**
5 **remark. I recognize that there may be that kind**
6 **of value to this site and I gave you a few**
7 **reasons, a few bullet points as to why we're not**
8 **being substantially detrimental to Mr. Banisch's**
9 **remark.**

10 Q. Okay. As I said, you cannot answer the
11 question whether or not it can be fully farmed on
12 this highly productive soil or not, as you
13 testified before us tonight?

14 **A. I said that already.**

15 Q. Okay. Address the issue in the zoning
16 ordinance in terms of open space vis-a-vis this
17 project with 33,000 solar panels. How does that
18 in any way comport with the intent under
19 Bedminster's ordinances and master plan to have
20 open space in this area?

21 **A. So Bedminster has an open space vision**
22 **by preserving this rather massive perimeter of**
23 **setbacks, buffers. You do create open space**
24 **around the outside of the property that, as we've**
25 **looked at it thoroughly, convinces us and me -- I**

1 **should say me -- that the appearance of open space**
2 **along Country Club Road and Meadow Road, that**
3 **visual, will remain an open space asset to the**
4 **community.**

5 Q. You're telling us that what we already
6 see as we go down the roadway as open space will
7 now be preserved because you're going to put a
8 fence behind it. That's your rationality?

9 **A. It will not be preserved. The fence**
10 **will be one contributing element, yes.**

11 Q. And you'll be able to see this 7-foot
12 fence that's running for a thousand feet as we're
13 going down the roadway, correct?

14 **A. No.**

15 Q. Okay. Tell us.

16 **A. Landscaping will be on the outside of**
17 **the fence.**

18 Q. Well, we know there's no berm. One of
19 the changes that were made, because you're so
20 familiar with the project, is that the berms up
21 front along the corner have been removed,
22 correct?

23 **A. That's because the panels were moved all**
24 **the way back.**

25 Q. Okay. And from the street, are you

1 testifying to something other than what
2 Mr. Kennedy said with regard to whether or not the
3 fence is visible around the outside of this
4 project?

5 **A. No, I think the testimony's consistent.**

6 Q. Okay. I'll ask you the question
7 directly then.

8 As I walk around this project -- and you
9 can use your red pen or not -- go around this
10 project, will I be able to see the 7-foot-tall
11 fence?

12 **A. So I have no doubt there will be**
13 **glimpses of it depending on where you're walking.**
14 **In the areas of high sensitivity, to us as**
15 **designers, you will see mostly plant material**
16 **rather than fence.**

17 Q. Okay. So the answer is that you will be
18 able to see the fence in areas?

19 **A. You heard what I said.**

20 Q. Right.

21 **A. You heard what I said. Not all over the**
22 **place. You might see isolated views and mostly**
23 **what you'll see is plant material on the outside,**
24 **which will cover most of it.**

25 Q. Okay. Even though in certain areas

1 there are no plantings. We already established
2 that.

3 **A. True.**

4 Q. And there are no berms, correct?

5 **A. Yeah. Mostly at the import -- input of
6 the Board, yes. The sense --**

7 Q. Are you going to say that they did it?

8 **A. The sensitivity to the berm issue -- let
9 me get out my pointer.**

10 Q. Sure. Why don't you point to
11 Mr. Forbes' area and show us where the berms are.

12 **A. That's already been asked and answered.**

13 Q. That's right. There are no berms,
14 correct?

15 **A. Right. Because of the dense vegetation
16 in this area and the big setbacks -- which by the
17 way, Mr. Sasso, I said were 240 feet from that
18 common property line where your client is, but
19 they taper back so you have wider setbacks as we
20 move away from the property line. But back in
21 this area when we looked at what's out here now
22 and what happens on your client's property, which
23 is undeveloped woodlands, you have a heck of a lot
24 of a visual barrier looking from the west toward
25 this site.**

1 Q. And in testing that theory out, and you
2 told us about certain areas that were checked, a
3 few areas on the map where the engineer actually
4 went out and checked, how many checks were done
5 along that line of the project?

6 **A. First of all, it's a question for the**
7 **engineers. I believe the answer is none.**

8 Q. That's correct.

9 MR. SASSO: That's all I have.

10 THE WITNESS: Thank you, Mr. Sasso.

11 MR. SASSO: Thank you.

12 ACTING CHAIRMAN RODELIUS: Ms. Donato,
13 would you like to come up?

14 MS. DONATO: Yes. Thank you.

15 CROSS-EXAMINATION

16 BY MS. DONATO:

17 Q. Good evening.

18 **A. Hello there.**

19 Q. Before I get into my questioning, you
20 know, the general questioning, I just have a
21 little bit of confusion about what you stated the
22 Medici case actually stated.

23 Did you say that Medici was a particular
24 suitability case?

25 **A. So Medici said for the D-1, you know,**

1 **the commercial land use, that applicants must**
2 **prove that the general welfare is served because**
3 **the site is particularly suited to the use. I**
4 **think that's what I said.**

5 Q. Yeah, but isn't Medici really a case
6 about the enhanced quality of proof that is
7 necessary for a D-1? Isn't that really what was
8 the pivotal -- we've had particular suitability
9 since the Cole case, which was way back in ancient
10 history.

11 **A. Right.**

12 Q. So that's been the law of "D" variances
13 for years, isn't that correct?

14 **A. Yeah, that's good. So Medici**
15 **revalidated Cole, if that's a way to put it, and**
16 **then I think the new addition, the major**
17 **contribution, was the enhanced burden of proof. I**
18 **think you're right.**

19 Q. And then when the courts whittled, they
20 whittled the other "D" variances that didn't
21 necessarily have to meet the enhanced quality of
22 proof regarding the master plan.

23 Wasn't that really the pioneering
24 statement of Medici rather than particular
25 suitability?

1 **A. So you're talking about, like,**
2 **Burbridge, Coventry Square, Randolph, right?**

3 Q. Yes.

4 **A. Uh-huh.**

5 Q. Okay. Now, do you agree that the
6 character of this area of Bedminster Township is
7 what is described as countryside?

8 **A. Yes.**

9 Q. And are you aware that Country Club Road
10 is identified as a gateway in Bedminster's
11 comprehensive farmland preservation plan?

12 **A. Yes, the gateway is described as the**
13 **entry point from Bridgewater moving north. Yes.**

14 Q. And isn't that same classification also
15 applicable to Meadow Road? Scenic. It's
16 considered -- this is considered the gateway to
17 the southern country area of Bedminster Township,
18 is it not?

19 **A. You know, we could check with**
20 **Mr. Banisch. I don't remember it that way. I do**
21 **remember, Ms. Donato, them both being described as**
22 **scenic roadways.**

23 Q. Well, did you review Bedminster's
24 comprehensive farmland preservation plan in
25 connection with your testimony?

1 **A. That's the document in the master plan?**

2 Q. Yes.

3 **A. Yes.**

4 Q. You did? So did you look at page 3
5 which states that they should protect gateways
6 into Bedminster County -- I mean Bedminster
7 specifically referring to Country Club and Meadow
8 Road?

9 **A. Yes, I did. Sure.**

10 Q. Okay. So you agree that both of those
11 roads are considered gateways?

12 **A. No, no. I think Country Club was**
13 **gateway. I think Meadow -- and I might be wrong.**
14 **I could check on this. I think Meadow was**
15 **importantly described as a scenic road or a scenic**
16 **corridor and so was Country Club. But Country**
17 **Club has that rather romantic moment in it where**
18 **it says when you leave Bridgewater and you head**
19 **north on Country Club, you have this scenic**
20 **gateway, this great sense of arrival into the**
21 **rural countryside. But I think it was only**
22 **mentioned through Country Club.**

23 Q. All right. Well, we'll stand by what
24 the farmland preservation plan states.

25 But the question I have for you is

1 doesn't that distinguish this particular area of
2 the township from the many other thousands of
3 acres that this township has so diligently sought
4 to preserve over the course of years?

5 **A. I'm respectful of what was said about**
6 **these two roads, but I think they could be said**
7 **about many roads in Bedminster. I don't think**
8 **there's a significant distinction.**

9 Q. So you just disagree with the long-term
10 planning goals of this community?

11 **A. No, no, no. No, I didn't. I said --**
12 **let me put it a different way. There are a lot of**
13 **other roads in Bedminster that look just as lovely**
14 **as this one.**

15 Q. I started out with gateway and you
16 decided to merge gateway and scenic. So let's
17 stick with the gateway for a minute. Okay?

18 The fact is that the farmland
19 preservation plan calls this a gateway. Whether
20 Meadow is included or not -- which I believe that
21 it is based on my reading, we'll deal with that
22 later -- gateway is different than scenic. You
23 agree with that?

24 **A. Yes.**

25 Q. Okay. So let's stick with that for a

1 moment. Okay?

2 So this particular area being a gateway
3 to the countryside of this community, okay,
4 differs from the general rest of the countryside
5 in this area because of this characteristic?

6 **A. I follow that.**

7 Q. You agree with that?

8 **A. And I agree with that.**

9 Q. Okay. And you agree that both of the
10 roads are scenic corridors, both Meadow and
11 Country Club?

12 **A. Yes.**

13 Q. And isn't it true that this
14 intersection, the intersection of Country Club and
15 gateway -- I mean, excuse me, Country Club and
16 Meadow is referred to in the farmland plan, that
17 this scenic gateway is "no more more evident" than
18 in this location?

19 **A. Yes.**

20 Q. And that matters not to you as a planner
21 when you talk about coming into and looking at the
22 negative effects of this particular proposal on
23 the intent and purpose of the zone plan and master
24 plan?

25 **A. It matters greatly to me.**

1 Q. So the fact that this is -- you didn't
2 mention gateway in your testimony. You didn't
3 mention scenic corridors in your testimony.

4 A. So I didn't use the term "gateway" --
5 hold on one second.

6 So let me clear it up. I think you're
7 right. If you go to page 159 in the master plan,
8 folks, it says "In this regard, no gateway is a
9 more intriguing study in contrasts to the traveler
10 -- "to the traveler that experiences crossing
11 Chambers Brook" -- that's where Bedminster is --
12 "from Country Club Road, Meadow Road or Airport
13 Road."

14 So they are mentioned all as gateways,
15 even Airport.

16 Q. Right.

17 A. Now, I did not neglect that. I
18 recognized that and I agree with that assessment.
19 The long and short of it is everything you see now
20 on Country Club or Meadow, recognizing that
21 gateway approach, stays the same visually. That
22 was part of the ultimate design of this layout.

23 Q. Have you ever seen a plan that shows the
24 existing and proposed vegetation from various
25 points of view from these roadways, shows that

1 plan and shows what you actually see on a
2 four-season basis?

3 **A. Are you talking about a rendering of**
4 **some sort?**

5 Q. Yes.

6 **A. So, yes.**

7 Q. Has it ever been presented to this
8 Board? I'm not referring to the cross sections.

9 **A. I was going to say the only way it's**
10 **been presented is through cross sections to my**
11 **knowledge.**

12 Q. So something that actually shows the
13 type of trees, their planting, their spacing,
14 that's not shown, is that correct?

15 **A. It is shown also in plan form on our**
16 **landscaping plans, of which there are six in the**
17 **plan set.**

18 Q. Okay. Is the proposed vegetation that
19 is part of this application and this fencing, this
20 7-foot fencing with the material on it, is that
21 the scenic vista that the master plan seeks to
22 preserve?

23 **A. No.**

24 Q. Okay. Thank you.

25 Now, have you also considered vista not

1 just roadside, but also vista from a distance?

2 **A. Yes.**

3 Q. You didn't mention that in your
4 testimony?

5 **A. I was waiting for you.**

6 Q. Well, I appreciate that. Thank you.

7 So you do know that many people travel
8 to this airport and they view this site from a
9 distance?

10 **A. Now, are we talking about a distance on
11 roads as we pass by to get to --**

12 Q. No, I'm on an airplane and I go into
13 this airport.

14 **A. Go ahead.**

15 Q. I think there's, what, 30,000 people a
16 year that travel into this airport as I understand
17 it?

18 **A. I don't know the number. Go ahead.**

19 Q. Those people also have a distance view
20 of this particular site, do they not?

21 **A. Are we talking about an aerial view?**

22 Q. Yes, an aerial view.

23 **A. I can see that, yes.**

24 Q. So all of the 7-foot fence with the
25 fabric and, you know, the nursery grown stock,

1 that's something that's not going to help those
2 who are flying over the site?

3 **A. I would agree. And, if I may, you know**
4 **Sica probably better than I do, that's true.**
5 **Okay? Someone's going to look down and see**
6 **panels. I don't think there's a way in the world**
7 **you convert that legit observation into something**
8 **that's a substantial detriment caused by this**
9 **facility.**

10 Q. That is your opinion, isn't that
11 correct?

12 **A. Yeah, that's what I said. Yeah.**

13 Q. So there are others who may differ,
14 isn't that correct?

15 **A. I won't argue with you. That's my firm**
16 **opinion. And, if I may, those same folks are**
17 **flying overhead and they might see Route 287**
18 **which --**

19 Q. Fine, but 287 is there. The township
20 doesn't control 287, does it?

21 **A. They might see office buildings in**
22 **Pluckemin. They might see Bridgewater Mall.**

23 Q. We're not talking about that, Mr. Tobia.
24 Let's stick to the issues. If you answer my
25 questions, we may be finished the next time we

1 come back.

2 **A. So the answer is pilots may see it. I**
3 **don't consider it a substantial detriment at all.**

4 Q. You don't consider it a substantial
5 detriment that those driving down the road no
6 longer see the farmland vista that the master plan
7 has intended to preserve?

8 **A. That's incorrect. Incorrect. I said**
9 **they will still see the exact -- or more or less**
10 **the exact streetscape that they see now.**

11 Q. Are you saying to me that the human eye
12 doesn't see beyond 200 feet?

13 **A. No, I'm saying they -- it certainly**
14 **does. But when you add in fencing, landscaping,**
15 **contouring in some areas, when you save trees and**
16 **when you cleverly locate panels on the site with**
17 **massive setbacks, the human eye will not see that.**

18 Q. Let's differentiate between seeing the
19 panels and seeing the newly created landscaping
20 and fencing that will be -- that's proposed in
21 order to block the view of the panels.

22 **A. All right.**

23 Q. There's a difference, is there not?

24 **A. There's a difference, but what was**
25 **described still contributes to streetscape and a**

1 **positive visual environment for the area.**

2 Q. But it is not the countryside vista that
3 the master plan has identified, and so strongly
4 identified, in many, many sections?

5 A. The countryside vista -- let's break it
6 down because it's a great question -- is not just
7 about big open fields. If you read the master
8 plan, countryside vista can also be achieved by
9 tree-lined streets, by hedgerows like you see on
10 **Meadow.**

11 Q. On the little corner up on the -- on the
12 northeast corner.

13 A. So one example of it, you're right, is
14 the frontage along Meadow more or less slightly
15 west of Country Club Road and then continuing all
16 the way down. So when you look at that -- and I
17 assume you've been out there. When you look north
18 from there, you don't see a big open field and a
19 big scenic vista. What you see is a tree line and
20 a shrub line, a hedgerow in that area. That
21 contributes also to vistas. It's just different.

22 **Fences --**

23 Q. Okay.

24 A. Fences -- if I could just finish up
25 because you made a good point. Nice fences might

1 **contribute, stone walls might contribute, old**
2 **houses and, also, big open fields.**

3 Q. Two hundred feet, okay, is what you're
4 saying, you're proposing, as your minimum setback.
5 That is a setback for a permitted use, isn't that
6 correct?

7 **A. Yes.**

8 Q. And you think a nonpermitted use should
9 have the same setback as a permitted use?

10 **A. Yes. Because, don't forget, your**
11 **permitted uses in the zone can achieve massing up**
12 **to 35 feet or even 50 feet if you're a church.**
13 **And I looked at that and our engineers looked at**
14 **that and said, wow, if we can screen and buffer**
15 **and protect homes with 200 feet, you sure can use**
16 **that same setback and shield 5-foot-high panels.**

17 Q. Have you ever seen a visual other than
18 the cross section which will show what travelers
19 on these two roads will see if this work was
20 approved and built as proposed?

21 **A. So we have cross sections in the**
22 **record --**

23 Q. I asked you other than cross sections.

24 **A. So what else --**

25 Q. And the straight line plan. When you

1 look -- haven't you ever been involved in an
2 application where somebody put something on a plan
3 and when it gets built, it doesn't look like what
4 it's supposed to look like? You've never heard of
5 that?

6 **A. Only the ones I have not worked on.**

7 Q. That's a little -- that's a little
8 pompous, I would say. Okay. We'll leave that.
9 We'll leave that.

10 **A. So I've looked at the cross sections and**
11 **I've looked at this thing in plan view and I've**
12 **examined the grading plan. So there have been a**
13 **lot of elements that I have looked at to figure**
14 **what visual impact would be.**

15 Q. Okay. You do know that this township
16 has engaged in planning efforts to save this
17 countryside since at least 1965?

18 **A. Yes.**

19 Q. And that the planning board back in '91
20 identified the need to preserve this area and this
21 site. And you know that they traveled all the way
22 up to the Appellate Division and won the first
23 major case that involved large-lot zoning in the
24 Kirby case, am I right?

25 **A. Yes.**

1 Q. And you know that in that case the
2 Appellate Division recognized, enforced and
3 allowed this community to have this zoning for
4 this site over the objection of Kirby.

5 **A. Yes.**

6 Q. You know that?

7 **A. Yes.**

8 Q. And you know that the Kirby Trust or
9 whatever entity Kirby has that owns this property
10 purchased this property for development purposes?

11 **A. I did not know that, but it makes sense.**

12 Q. And did you know that before the
13 ownership of this property by Kirby, the entire
14 site was continuously farmed including the back
15 area?

16 **A. No.**

17 Q. You didn't know that, did you?

18 **A. No.**

19 Q. And you do recognize that this
20 township's efforts to preserve its countryside and
21 its farmland has continued unabated since 1965?

22 **A. Yes.**

23 Q. And the R-10 ordinance was adopted in
24 1994?

25 **A. Okay.**

1 Q. And are you aware of how the state
2 planning commission viewed this township's
3 planning efforts in this regard?

4 **A. I don't know what that means.**

5 Q. The state planning commission reviewed
6 this township through cross-acceptance process.

7 **A. Oh, okay. Yes. Yes.**

8 Q. So let me just make sure. Maybe if I
9 preface this.

10 Do you recognize farmland preservation
11 as a valid planning objective?

12 **A. Yes.**

13 Q. And do you acknowledge that farmland
14 preservation is necessary for the sustainability
15 of our society in terms of being able to eat
16 product that's grown on the land?

17 **A. Yes.**

18 Q. Okay.

19 **A. In the same way I see solar as a
20 sustainable contributor, Ms. Donato.**

21 Q. So you realize we have two public goods:
22 We have solar and we have farmland. And they're
23 having a head-on collision on this piece of
24 property, aren't they?

25 **A. Great.**

1 Q. So you also know based on
2 cross-examination from Mr. Sasso and the report of
3 Mr. Banisch that the State of New Jersey is not
4 really fond of the idea of putting farmland -- I
5 mean putting solar panels on farmland. Whether
6 you want to call it grid or not, it wasn't a
7 recommended conflict that they really liked. They
8 didn't like it?

9 A. So I have an answer for that and it's
10 quick. Okay? Solar's inherently beneficial by --
11 you have the Cox volume in front of you. It's
12 indisputably mentioned as an inherently beneficial
13 land use and defined as such without any
14 distinction as to whether it should be on
15 farmland, metered, grid or in any other zone.

16 It's a simple definition. It says
17 solar's inherently beneficial. And I think that's
18 very important for this case. This is farmland.
19 I understand. The master plan says it. I
20 understand that. There's a little bit of farming
21 activity going on this site. Solar's inherently
22 beneficial. And it contributes as well as all
23 these points you're making, which are totally
24 legit, about scenic vistas being important and
25 farmland being important. Solar's important too.

1 Q. And I don't think anyone's disputing
2 that solar's important. The issue here is whether
3 solar belongs on a farm that is identified in the
4 master plan and efforts by this township having
5 been made continuously since 1965 to save the
6 farmland.

7 Do you have any idea the amount of
8 farmland that this township has preserved since
9 then?

10 **A. So the master plan identifies it in one**
11 **section as two-thirds of the community. And I**
12 **don't know if that's preserved, but it's assessed.**
13 **It recognizes that it's a big part of the**
14 **assessment.**

15 Q. So even -- I know that farmland has
16 never been determined to be inherently beneficial,
17 but it is a public good, a necessary public good,
18 is it not?

19 **A. Yes. Nice distinction, though. I agree**
20 **with you. Public good, not inherently beneficial.**
21 **Absolutely a public good.**

22 Q. So you're aware that this controversy
23 between farmland and solar has occurred in other
24 communities in New Jersey, right? Are you
25 familiar with some of the cases?

1 **A. No. So I'm a little familiar with it.**
2 **I am not familiar with case law on the topic.**

3 Q. Oh, so you don't know about the Garden
4 Solar case involving Raritan Township then?

5 **A. No.**

6 Q. You don't know about the cases down in
7 Greenwich and Woolwich Township down in New
8 Jersey?

9 **A. No.**

10 Q. So you're not aware of the fact that
11 in --

12 MR. HALL: I object. He said he didn't
13 know. So I think that answers that question.

14 Q. But I'm a little curious. I know you're
15 very well prepared and I know you always like to
16 try and get everything done the right way.

17 So you're coming to a community with a
18 more than 50-year history of farmland preservation
19 and you don't know any of the farmland
20 preservation cases. You don't go to the farmland
21 preservation plan. You just basically are saying
22 that this is just a little drop in the bucket and
23 it doesn't matter.

24 **A. So that's a plainly unfair**
25 **characterization of what's now two and a half**

1 hours of testimony. My discipline is not in
2 farming. It's not in ag. I'm not a farmer. You
3 know why I'm here. You know what I do for a
4 living. And this is my role in this case. And my
5 role in this case, Ms. Donato, says maybe we could
6 find a happy compromise here that treats the
7 perimeter of this property as farmland, open
8 space, vista-sensitive, and still provide a
9 tremendously important inherently beneficial use
10 on the property.

11 So what I'm saying is maybe both --
12 you're saying they're at odds. Okay. Maybe they
13 both can be achieved at the same time.

14 Q. Are you familiar with the Solar Act of
15 2012?

16 A. Ask away. I don't know.

17 Q. You're not familiar with it?

18 A. If you ask a question, maybe I am. I
19 don't recall.

20 Q. So are you aware that the legislature
21 actually in response to the state energy master
22 plan and the concern about destruction of farmland
23 put limits on the number of applications that can
24 be approved on farmland for solar facilities?

25 A. Okay. So the answer is yes. The answer

1 is Tom Lynch, our first witness, is the expert in
2 that field and contributed what he needed to on
3 that topic.

4 Q. So you're not balancing the public good
5 of farming versus solar? Solar trumps all? Solar
6 trumps all?

7 A. Again, that's unfair.

8 Q. I'm asking you. That's what it sounds
9 like.

10 A. Yeah, and the answer is no. I have
11 balanced. I told you we're doing solar. I told
12 you we're protecting the perimeter of this
13 property. Our ag yield before and after this job
14 is completed, if it's approved, will be roughly
15 the same, which is 12 acres of cultivation.

16 Q. So before I go into some of the more
17 meatier things, I just want to get to this
18 particular issue. So a property owner buys a
19 piece of property. The piece of property is
20 entirely designated as either prime agricultural
21 soil or soils with statewide significance. And
22 they choose not to farm that anymore, because
23 that's what happened with Kirby.

24 So by virtue of their choice not to farm
25 it, therefore, it's not a valuable farm?

1 **A. I would still say -- it's not a valuable**
2 **farm. It might still be a valuable farm asset,**
3 **meaning the soil is still valuable. There's**
4 **nothing that I read in zoning and master plan**
5 **documents of this plan that say you must farm.**

6 Q. Of course not. They can't really --
7 well, maybe the day will come, but they can't
8 really compel --

9 **A. They can't compel.**

10 Q. I understand that. But that's not my
11 question. Let's try to stick with what my
12 question was. Okay?

13 MS. DONATO: Could you reread my
14 question for me, please, so we can try to stay on
15 where I was going?

16 And we're very fortunate. You have one
17 of the best court reporters that I've ever, ever
18 dealt with. And we've spent years together --

19 MR. HALL: Wait a minute. We get credit
20 for that.

21 MS. DONATO: She's fantastic. She's
22 really, really good.

23 THE WITNESS: She brings drinks. How
24 can you go wrong?

25 MS. DONATO: And she's fast. She gets

1 the properties on Somerset and Preston.

2 Now, if you go up to those properties
3 and you look over this site from that area, what
4 do they see?

5 A. So right now along that common property
6 line from Preston, shown thus, upper right and
7 moving westward to Somerset shown near the center,
8 upper center of the exhibit, well, you have four
9 homes. Right now there is a nice established
10 treeline here, mostly deciduous plant material, 30
11 to 50 feet high, I would say, and it's a nice
12 dense screen at the property line with plant
13 material on both sides of the common property
14 line.

15 From 200 feet back into the site, right
16 at the beginning of the array, looking at these
17 homes, at this time of year you can barely see any
18 residential structure. And really, Ms. Donato,
19 there are three homes in question: The one to the
20 west of Preston, lot 4 -- block 67, lot 4, and
21 then the two that flank Somerset so indicated.

22 So the answer is you see an existing
23 tree line.

24 Q. And that is a -- is that a deciduous
25 treeline?

1 **A. Like I said, mostly deciduous, but**
2 **there's some evergreen stuff in there.**

3 Q. So for many months of the year they see
4 through this treeline?

5 **A. Generally the number is five months**
6 **foliage is down, seven months it's up.**

7 Q. Okay. So --

8 **A. Roughly.**

9 Q. -- for five months they are able --
10 they just have some evergreens there.

11 I mean, have you analyzed what the view
12 is that they currently have without the plans in
13 full growth?

14 **A. Without the plants?**

15 Q. Yeah, without -- when they're not -- in
16 the off season for the deciduous.

17 **A. Yeah, I see. So, yes, they'll be able**
18 **to see through into the site. You know, you**
19 **still -- when foliage is down, you still have**
20 **obstructions. You still have some evergreen in**
21 **there. You still have some scrub. You have the**
22 **bases of the trees, but you will be able to see in**
23 **through the site.**

24 Q. Okay. And after the site is developed
25 if this is approved as you proposed, what will

1 they see then?

2 **A. They will see a berm, a fence, and that**
3 **rather long list of plant material I described**
4 **earlier in addition to all the plant material that**
5 **will stay on that property line because none of**
6 **that's being removed.**

7 Q. So they also will not have the same
8 vista that they have. They're going to be looking
9 at a berm with a fence on top of it, right,
10 instead of a vista?

11 **A. Right now from that angle I would not**
12 **characterize that as a vista. There's a partial**
13 **obstructed view in the wintertime of a field in**
14 **modest condition. Afterwards, though, I think**
15 **you're right, at the 200-foot line or a little bit**
16 **north of that you're going to see a lot of new**
17 **plant material.**

18 Q. Let me ask you this. How far does the
19 human eye see?

20 **A. I don't know. I'm not an**
21 **ophthalmologist.**

22 Q. So then how do you know whether the 200
23 foot is going to really virtually block
24 everything, you're not going to see anything?

25 **A. Two hundred feet has been deemed an**

1 **appropriate setback by the Bedminster zoning**
2 **ordinance --**

3 Q. That was not my question.

4 **A. Well, it's one way I --**

5 Q. That was not my question, Mr. Tobia.

6 **A. It's one way I know. It's been deemed**
7 **an appropriate control for buildings 35 to 50 feet**
8 **high. So now, obviously, we can all see more than**
9 **200 feet. I don't know the scientific number**
10 **where that vision ends.**

11 Q. Are you aware that this site is located
12 in an environmentally constrained area under the
13 Highlands planning area?

14 **A. I could see it would be, yes.**

15 Q. And do you know why it's environmentally
16 constrained?

17 **A. The area is characterized by water**
18 **bodies and wetlands.**

19 Q. And are you aware of anything else? For
20 example, habitat value?

21 **A. No.**

22 Q. So you didn't -- did you read the
23 Highlands plan with regard to its characterization
24 of this site as environmentally sensitive?

25 **A. No.**

1 Q. Okay. Did you look at the Garden State
2 Greenways plan with regard to this site?

3 **A. No.**

4 Q. So you're not aware that that particular
5 document characterizes this site as critical
6 habitat?

7 MR. HALL: I'd object. He said he
8 didn't read it so he's obviously not aware of what
9 it may say.

10 Q. Well, if this site is characterized as
11 critical habitat, that has no bearing on your
12 testimony in terms of the negative criteria,
13 substantial detriment to the public good?

14 **A. What I'll tell you is the topic has been**
15 **explored. It's not just --**

16 Q. Explored by whom?

17 **A. By an EIS statement prepared by this**
18 **applicant on file, Amy Greene. And it's not my**
19 **field.**

20 Q. Okay. Fine. So you didn't consider
21 that as part of the negative criteria in your
22 testimony?

23 **A. It's not my field.**

24 Q. Okay. Are you aware of the fact that
25 this particular property is also in planning area

1 five under the state plan?

2 **A. Yes.**

3 Q. Are you familiar with the concept of
4 fragmentation of farmland?

5 **A. Yes.**

6 Q. And are you aware of the fact that these
7 state planning agencies have expressed great
8 concerns about the fragmentation of farmland in
9 this area?

10 **A. Yes.**

11 Q. So they don't want the contiguous
12 farmland to be developed for purposes that -- you
13 know, that would not be farmed.

14 **A. I understand.**

15 Q. Okay.

16 **A. Half of this, remember, even in the**
17 **master plan locally doesn't show it as farmland.**
18 **It shows it as wooded. And, if I may, just to**
19 **clarify that, it's a good question. This does not**
20 **have a lot of continuity with the real big blocks**
21 **of farmland as you move north and west in this**
22 **community. It's abbreviated by a residential**
23 **neighborhood to the north, by 287 of course, and**
24 **by the fact that half of our piece is not**
25 **farmland. It's heavily wooded right now.**

1 Q. So you basically just disagree with the
2 state planning documents that you didn't review in
3 connection with your testimony?

4 **A. I'm not recognizing that question. I**
5 **don't even know what it means.**

6 Q. You didn't review them.

7 **A. Right.**

8 Q. But you seem to think that this
9 particular parcel doesn't fall within this idea of
10 having a targeted farm or having a -- and not
11 having fragmentation.

12 **A. You asked me with one of the documents**
13 **if I was familiar with large blocks of contiguous**
14 **plant. I said, yes, it's even in the master plan.**

15 Q. Yes.

16 **A. I'm merely saying this site really**
17 **doesn't fit into that goal.**

18 Q. Are you aware that this site is a
19 targeted farm under all of these farmland
20 preservation documents?

21 **A. It's targeted as prime ag soil, as**
22 **farmland and farmland assessed soil. So, yes, I'm**
23 **familiar with that.**

24 Q. But you're saying that doesn't matter.
25 I mean, look at Mr. Banisch's report. He points

1 out that this is priority farmland, that it is
2 recognized by all of these resources as being a
3 site that should be saved. Class A. It's the
4 highest priority rating for a farm that should be
5 saved and you're saying it doesn't matter?

6 **A. I'm not saying it doesn't matter. I'm**
7 **saying we've applied a great deal of consideration**
8 **to that goal. I'm saying half of this has not**
9 **been farmed for decades. I'm saying the other**
10 **half is getting hayed once or twice a year,**
11 **Ms. Donato. This is not active farmland. It's**
12 **getting hayed -- let me finish, please. It's**
13 **getting hayed once or twice a year.**

14 **I look at it -- and I respect**
15 **tremendously the visual importance of farmland,**
16 **okay, because it looks pretty. Every place in**
17 **town. And that that visual will be retained if**
18 **this is approved and built.**

19 **Q. The visual of looking and seeing 200**
20 **feet at the smallest and seeing a fence, a**
21 **chain-link fence, that preserves the vista of a**
22 **farmland?**

23 **A. Yeah, so, I'm going to repeat it again.**
24 **The fence from these vistas will be planted. So**
25 **the fence is really more the last line of defense.**

1 **What's first is distance as an obstacle. What's**
2 **second is topography as an obstacle, then new**
3 **plant material, then the camouflaged fence with**
4 **the green screen.**

5 Q. And the new plant material is not a
6 countryside vista -- we went over that -- because
7 a vista is a farmland vista that the township is
8 attempting to preserve, not some plants out of a
9 nursery.

10 **A. We did discuss that already. If the**
11 **Board wants me to repeat it, I will. Vistas come**
12 **in different ways.**

13 Q. And you're proposing to change the
14 vista. We went over there. We'll just leave it
15 what it was. We don't need to go back there
16 again. Okay?

17 Are you aware whether there are any
18 assessed farmlands near this site?

19 **A. The majority of this area appears to be**
20 **in farmland use. I have to assume it's assessed**
21 **as well.**

22 Q. So wouldn't you say that this site is
23 predominantly bounded by farmland?

24 **A. I'll say it cautiously. I haven't**
25 **looked them all up in tax records, but they do**

1 **give the appearance of large pieces of farmland.**

2 Q. Now, I know Mr. Sasso asked you about
3 the Somerset County Agricultural Development
4 Committee.

5 Did you say that you hadn't looked at
6 their studies with regard to this site and other
7 areas in Bedminster Township?

8 **A. No.**

9 Q. You did not look. The answer would be
10 yes, right?

11 **A. I did not look --**

12 Q. I'll refresh. I don't want to have a
13 double negative.

14 **A. Yeah.**

15 Q. Did you look at the farm -- at the
16 Somerset Agricultural Development Committee's
17 comprehensive farmland preservation plan?

18 **A. Thank you. No.**

19 Q. Thank you. That reminds me about
20 another double negative I have to get back to when
21 I get to that page.

22 Okay. So you did read Frank Banisch's
23 report, isn't that correct?

24 **A. Yes.**

25 Q. So you're aware that Mr. Banisch did

1 quote from the SCADC plan, right?

2 **A. Okay.**

3 Q. So you're aware that that's that concept
4 of fragmentation that they are advancing, that the
5 necessity is to retain large masses of viable
6 farmland?

7 **A. Yes.**

8 Q. And you know that this area is also in
9 the Upper Raritan agricultural development area?

10 **A. No.**

11 Q. You didn't know that. And you didn't
12 look at those documents either?

13 **A. No.**

14 Q. Okay. Have you looked at why all of
15 these -- why the township, county and these
16 various agencies have classified this site, lot 10
17 of this site, as a targeted area with high
18 priority?

19 **A. High priority for?**

20 Q. Acquisition and farming.

21 **A. I did not see the acquisition part.**

22 Q. I mean farming pres -- what happens --
23 you know what happens if you're targeted under --
24 what happens when you're targeted?

25 **A. So you're talking about preservation --**

1 Q. -- of farmland, yes.

2 **A. Yes. So to my knowledge --**

3 Q. So when you're targeted --

4 **A. Go ahead. No, you go.**

5 Q. When you're a targeted farm, you are a
6 prime farm for acquisition for preservation of
7 whatever type it is, whether by easement or direct
8 purchase.

9 **A. Right. And so we know of no attempts**
10 **for that to happen on this piece.**

11 Q. That was not my question.

12 **A. Give me a question.**

13 Q. My question to you was that as a
14 targeted farm, it is a very highest priority class
15 for acquisition for preservation as farmland?

16 MR. HALL: I don't think that was the
17 question. I think it was a statement but...

18 MS. DONATO: Are you aware I said.

19 **A. And the answer is no. And, Ms. Donato,**
20 **I've got to tell you, if you don't mind, you know**
21 **what I do for a living. I think you know I'm not**
22 **a farmer nor a farmland expert. And my testimony**
23 **was here all about master plan, all about zoning.**
24 **And this line of questioning has gone really into**
25 **ag and farm. And, you know, I'm giving you some**

1 **foundation on it --**

2 MR. SASSO: I object to this,

3 Mr. Chairman. His time --

4 MS. DONATO: I just want to say --

5 MR. COLLINS: Mr. Sasso, it's not your
6 turn.

7 MR. SASSO: This is an objection by his
8 own attorney --

9 MR. COLLINS: It's not your turn --

10 MR. SASSO: -- and farming is --

11 (Indiscernible crosstalk; Reporter
12 requests one speaker)

13 MR. SASSO: Farming is a use.

14 MR. COLLINS: You're directed to sit
15 down, Mr. Sasso.

16 BY MS. DONATO:

17 Q. Okay. I might be reading a different
18 report and I might be looking at different master
19 plans, but it's rather obvious to me from
20 Mr. Banisch's three reports that farmland
21 preservation is an absolutely integral and prime
22 goal of this community.

23 So you come to testify about solar and
24 you don't know anything about the prime goal of
25 the master plan to preserve farms?

1 MR. HALL: I object. He said -- he
2 listed that goal.

3 **A. I did and I addressed it as best I could**
4 **and you heard that. Okay?**

5 Q. That's fine.

6 MR. COLLINS: Let's move on, Ms. Donato.

7 MS. DONATO: I will. Thank you,
8 Mr. Collins.

9 BY MS. DONATO:

10 Q. Now, with respect to the goals, other
11 goals of the master plan, there were several that
12 I think you did not mention. I know you indicated
13 that you didn't look at the habitats. Okay?
14 We've discussed the scenic value.

15 You're aware that open fields and
16 pastures are supposed to be preserved. That's one
17 of the goals of the master plan. Rolling
18 landscapes are supposed to be preserved. You're
19 aware of that?

20 **A. Yes.**

21 Q. Farmland is supposed to be preserved.
22 You're aware of that?

23 **A. Yes.**

24 Q. Natural resources are supposed to be
25 preserved?

1 **A. Yes.**

2 Q. And they're supposed to retain
3 productive agricultural land in contiguous
4 parcels?

5 **A. Yes.**

6 Q. Can you tell me how this proposal
7 advances the goal of retaining protected
8 agricultural land with contiguous parcels?

9 **A. I've been over that five times. Five**
10 **times.**

11 Q. Your answer to me was they're not
12 farming it and so therefore -- is that your
13 answer? They're not farming it, so therefore it
14 doesn't --

15 **A. There were a few responses: One, half**
16 **is not being farmed; two, the front is being**
17 **lightly farmed; three, we explained early on, a**
18 **while ago, this property, there's no soil export.**
19 **I mean, the worst thing you could do with a piece**
20 **like this is remove soil. We're not doing**
21 **anything like that. We're doing minimal grading**
22 **to this site, so we're not disturbing any farmland**
23 **in terms of, you know, regrading the entire**
24 **property. And, importantly, in that front corner**
25 **we are continuing farming, which roughly,**

1 **Ms. Donato, equals what the cultivation activity**
2 **is on the site now.**

3 Q. I understand that and we went over
4 that.

5 So your position is that if an owner
6 chooses not to farm land that is characterized by
7 every agricultural agency and this township as
8 being highly productive agricultural soils,
9 therefore it's not valuable farmland. We went
10 over that.

11 **A. No, no, no. I did not say that. What I**
12 **did say is it's the property owner's choice**
13 **whether they want to farm or not. It does not --**
14 **the inactivity does not mean it's not prime land**
15 **anymore, I agree with you there, but no one -- no**
16 **part of the ordinance says you must farm.**

17 Q. I understand that, but that's not my
18 question.

19 **A. You keep changing it.**

20 Q. It's not my question.

21 **A. Repeat the question, please.**

22 Q. My question to you is if a piece of
23 property such as lot 10 is evaluated and
24 designated in every farmland plan that you can
25 find applicable to this area as being valuable

1 farm that should be preserved and targeted, the
2 fact that the owner has unilaterally chosen only
3 to farm a portion therefore takes it out of that
4 master plan goal of preserving farmland?

5 **A. No. I did not say that at any point.**

6 Q. Good. That's better. That's good.

7 ACTING CHAIRMAN RODELIUS: Ms. Donato, I
8 just want to say, we'll do ten more minutes and
9 then we'll try to wrap it up --

10 MS. DONATO: Okay.

11 ACTING CHAIRMAN RODELIUS: -- and
12 continue next time.

13 MS. DONATO: Okay. Thank you so much.

14 ACTING CHAIRMAN RODELIUS: Does that
15 agree with you?

16 MS. DONATO: Oh, that's just fine.
17 Thank you so much.

18 BY MS. DONATO:

19 Q. Okay. So you didn't do any
20 environmental evaluation. I'm not going to ask
21 you that.

22 You're aware that the farmhouse is an
23 historic homestead?

24 **A. It's recognized by the master plan that**
25 **way.**

1 Q. Okay. Do you know what's going to
2 happen to the farmhouse?

3 **A. The plan is to leave it on the site.**

4 Q. While it experiences demolition by
5 neglect?

6 **A. The plan is, if this is approved, to
7 make it presentable and leave it there as a
8 contributing structure to the streetscape.**

9 Q. And if the plan is not approved, it will
10 just be continuing to deteriorate the site?

11 MR. HALL: That's up to the property
12 owner because we won't be here.

13 **A. Yeah, I don't know.**

14 Q. Okay. All right. I'd like to get to
15 the Sanofi issue. Now, everything that you said
16 about Sanofi's site not being able to be utilized
17 itself is based on a hearsay statement that you
18 got from Mr. Lynch that Mr. Lynch allegedly got
19 from somebody from Sanofi?

20 **A. It's not a hearsay statement. It was
21 sworn testimony that summarized his negotiation
22 with property owners on that piece.**

23 Q. He testified to a hearsay statement by
24 somebody from Sanofi. Isn't that what he did?

25 **A. You're asking for a legal conclusion.**

1 Q. All right. So you don't have any direct
2 information as to why the Sanofi site cannot be
3 used for solar installations?

4 **A. So the only direction we have, I have,**
5 **is the testimony offered before this Board nearly**
6 **two years ago now.**

7 Q. Okay. That's it? You don't -- did you
8 ask whether or not there were any other
9 alternatives?

10 **A. I asked, okay, as part of my**
11 **reconnaissance about the on-site use of Sanofi.**
12 **That was a question that was cleared up during**
13 **testimony. And then we came to the conclusion**
14 **this site, the subject property here before the**
15 **Board tonight, was the next best alternative.**

16 Q. Did you look at any other alternatives?

17 **A. Me?**

18 Q. Yes.

19 **A. No.**

20 Q. Did you ask your client to look at any
21 other alternative sites?

22 **A. No.**

23 Q. Did you ask if there were any
24 alternative technologies that could achieve, you
25 know, renewable energy reduction, per se?

1 **A. So, again, this is outside of my field**
2 **of expertise. The simple answer is I absolutely**
3 **did not do that. I wouldn't even know how to**
4 **answer the question -- ask the question.**

5 Q. So were you asked to participate in the
6 selection of this site before it occurred?

7 **A. No.**

8 Q. Okay. So you came in afterwards?

9 **A. Yes.**

10 Q. Thank you. Okay.

11 Now, in your direct testimony you said
12 that the panels are hidden from public view and
13 the neighbors' views, right?

14 **A. Correct.**

15 Q. So you do acknowledge that the fences
16 are not hidden from the neighbors' views and the
17 public views?

18 **A. They make it able to screen the panels.**

19 Q. Okay. But they're there to screen the
20 panels. The fence themselves, is chain-link fence
21 with fabric something that's characteristic or
22 contextually sensitive to an agricultural
23 countryside area?

24 **A. So I think the green mesh certainly does**
25 **that. The solar ordinance certainly asks for**

1 buffering. And, you know, it contributes. I
2 mean, I'm not saying it's an historic element or
3 rural element, but it gets the job done visually.

4 Q. You get the job done by looking at a
5 7-foot chain-link fence with mesh rather than
6 looking at --

7 A. Wrong again.

8 Q. -- a farm.

9 A. Ms. Donato, wrong again. You get the
10 visual and the protection by looking at plant
11 material, by this topo thing that we've talked
12 about, how the grade changes and as an insurance
13 policy -- maybe that's the best way to put it --
14 the fence.

15 Q. Well, the fence -- let's be honest. You
16 already said the fence is there because of some
17 electrical code.

18 A. No, the fence is there -- it's
19 absolutely required by electrical code.

20 Q. Okay.

21 A. And it does have a secondary purpose of
22 screening.

23 Q. Okay. But it's there -- you have to
24 have a fence.

25 A. Correct.

1 Q. Okay. And I'm not going to go back over
2 the vegetation. The vegetation is not the
3 vegetation that's there now. You're adding
4 vegetation. You're creating a different vista
5 than currently exists.

6 **A. We're using existing plus new.**

7 Q. You're changing the existing vista that
8 currently exists, aren't you?

9 **A. I don't know how to answer that. I**
10 **think it's --**

11 Q. Did you read the testimony of
12 Mr. Kennedy?

13 **A. Of course.**

14 Q. You know that he admitted that it
15 changes the vista. It's not the same vista.

16 **A. That, I believe, was testimony when we**
17 **had a berm and plant material on the front corner**
18 **piece and then he was right, yeah. Then --**

19 Q. We'll take a look again. We'll check.
20 We'll check.

21 **A. That open field is being eliminated.**

22 Q. We will check.

23 MS. DONATO: I'm just trying to
24 eliminate everything that Mr. Sasso asked, so I
25 appreciate your bearing with me.

1 Q. I'm a little bit confused about
2 something about the plans changing.

3 Have the plans changed subsequent to the
4 October 2014 date?

5 **A. No.**

6 Q. So when you say that you added
7 additional vegetation for a neighbor, that was all
8 incorporated -- or the site engineer did. That
9 was all incorporated in that October 2014?

10 **A. Yes. So the plan that we discussed**
11 **tonight changed, I think, in July 2014. After**
12 **that there was a lengthy discussion of stormwater**
13 **which began around Labor Day with a plan**
14 **submission that was all about stormwater for**
15 **months. You were probably here for all that.**

16 Q. Probably? Did you read those
17 transcripts? I think I was here.

18 **A. So, anyway, this plan that you see here**
19 **now changed finally, at its final moment, when**
20 **tweaks were made for detention purposes. But**
21 **other than that, the panels, the fencing, the**
22 **buffering, all that was established by**
23 **Mr. Kennedy just before you started that**
24 **stormwater dialogue.**

25 Q. I got a little confused on your

1 testimony when you were asked in the beginning
2 what transcripts you reviewed and then you said I
3 reviewed all the transcripts. But you didn't
4 review the stormwater transcripts?

5 **A. Correct.**

6 Q. You realize that there was a lot of
7 cross-examination about stormwater before the July
8 2014 revisions and additional soil studies that
9 were undertaken?

10 **A. Yes.**

11 Q. So what did you read about stormwater?

12 **A. So I did not read the transcripts on**
13 **stormwater because we've been having preparation**
14 **meetings for this hearing and I discussed with Rob**
15 **the entirety of his stormwater testimony, cross,**
16 **plan adjustments. I remember there was discussion**
17 **about borings. And that was obviously easier to**
18 **deal with him sharing with me what happened.**

19 Q. So the area along Meadow that is going
20 to be retained as farmland, you know that there
21 was a very large panel array proposed in that
22 area?

23 **A. I explained that earlier. Yes.**

24 Q. Did you read the transcripts with the
25 questioning as to the stormwater implications with

1 respect to that area?

2 **A. No.**

3 Q. So you're not aware of the fact that
4 stormwater precluded or made it very, very
5 difficult to use that area of the site --

6 MR. HALL: I object. I don't think
7 that's in the record.

8 **A. So I don't know if --**

9 MS. DONATO: The record will speak for
10 itself, Mr. Hall.

11 MR. HALL: Yes, but you're
12 characterizing the record and I disagree with your
13 characterization.

14 MS. DONATO: All right. You know what?
15 When I come back the next time, I'll just get the
16 quote from the record.

17 MR. HALL: It's irrelevant because it's
18 not there now, so I think we're wasting time.

19 ACTING CHAIRMAN RODELIUS: I think it's
20 a good time now to talk about when we're going to
21 come back to continue the line of questioning and
22 then have public comments.

23 Paul, how does the calendar look?

24 MR. FERRIERO: We have two applications
25 on for November 5th, so the next open would be

1 November 12th.

2 MR. HALL: Mr. Tobia is not good there.
3 We'll have to go to December. First meeting in
4 December, is that the 3rd?

5 ACTING CHAIRMAN RODELIUS: Yeah, it's
6 the 3rd.

7 MR. FERRIERO: I'll be out of state.

8 ACTING CHAIRMAN RODELIUS: How do you
9 look, Mr. Sasso, Ms. Donato?

10 MR. SASSO: Yeah, November is no good
11 for me, Gary. December. I'm saying December is
12 fine.

13 MR. HALL: That's what we're saying too.

14 ACTING CHAIRMAN RODELIUS: The 3rd of
15 December works?

16 MS. DONATO: Well, I've had a
17 long-standing conflict and I've rearranged my
18 schedule numerous times for the first. And I am
19 retiring from that position so that first
20 Wednesday -- I mean that first Thursday of
21 December, it's kind of like one of the last -- I'm
22 going to be the first and the third. The last two
23 meetings I'm going to be there and I really don't
24 want to send a sub. I've been going there for 30
25 years.

1 ACTING CHAIRMAN RODELIUS: Are you
2 available, Mr. Tobia, on the 10th?

3 MR. HALL: No. I'm available on the
4 3rd.

5 ACTING CHAIRMAN RODELIUS: All right.
6 Well, obviously, if Ms. Donato can't make it on
7 that date, then we'll have to move it. You know,
8 if you're not available on the 10th and she's not
9 available on the 3rd, then it looks like we will
10 either have to go into January or propose a
11 special meeting. So I would recommend going to
12 January.

13 THE WITNESS: Hold on a second.

14 ACTING CHAIRMAN RODELIUS: Which would
15 be the 7th or the 14th.

16 THE WITNESS: Are we asking now January,
17 Mr. Chairman?

18 ACTING CHAIRMAN RODELIUS: Yes.

19 MS. DONATO: I'm available both of those
20 dates.

21 MR. SASSO: So am I.

22 MR. HALL: I have to check with my
23 client, please.

24 ACTING CHAIRMAN RODELIUS: Sure. Sure.

25 (Pause)

1 MR. HALL: We're concerned about
2 January. We know we can't do November. We agree
3 on that. December, I mean, how many more
4 questions does she have? Let's finish it tonight.

5 ACTING CHAIRMAN RODELIUS: No, no, no.
6 We're through for tonight, Mr. Hall.

7 MR. HALL: If we can carry it to the 3rd
8 and we'll try to reschedule if you can give us
9 another date, but he's not available on the 10th.
10 I mean, the questioning could have been far more
11 quicker than occurred, I mean, frankly.

12 ACTING CHAIRMAN RODELIUS: What's the
13 rush, Mr. Hall? Is there a rush?

14 MR. SASSO: After waiting four months.

15 MR. HALL: I mean, we're skipping
16 November. We're not arguing about November, but
17 we're talking two months instead of three months.

18 ACTING CHAIRMAN RODELIUS: Well, you
19 know, if folks are not available, what do you want
20 me to do? We'll try to find a date that works for
21 everybody unless you want to propose a special
22 meeting. And that's always very tough to get
23 everybody especially around the holiday time.

24 MR. HALL: It seems like she could have
25 been more concise. I don't know how many more

1 questions she has. I mean --

2 ACTING CHAIRMAN RODELIUS: No, no.

3 Listen, I think she was doing her job and now we
4 need to schedule a date. So let's figure it out.
5 I think we're in January. You said you're good
6 for both Thursdays, right?

7 MS. DONATO: Yes, I am.

8 ACTING CHAIRMAN RODELIUS: All right.
9 Mr. Hall, what about you and your client? I think
10 it's the 7th or the 14th.

11 MR. HALL: It sounds like you're not
12 giving me a choice, so...

13 ACTING CHAIRMAN RODELIUS: Well, I'm
14 giving you the 7th or the 14th.

15 MR. HALL: The 7th.

16 MR. SASSO: The 7th.

17 ACTING CHAIRMAN RODELIUS: Sounds good.

18 MR. SASSO: I'm not available the 14th.

19 Is that the last witness? So we should
20 bring our planner?

21 ACTING CHAIRMAN RODELIUS: Well, we have
22 lots -- I'm sure we're going to have public
23 questions. The Board will have questions I'm
24 sure.

25 MR. SASSO: Okay.

1 MR. COLLINS: Mr. Hall, do you have any
2 other witnesses after Mr. Tobia and before the
3 objectors present their case?

4 MS. DONATO: Thank you, Mr. Collins.
5 That's what I think Mr. Sasso was trying to find
6 out.

7 MR. HALL: We haven't made that final
8 judgment yet.

9 MR. COLLINS: Okay. Could you let -- if
10 you are going to have another witness --

11 MR. HALL: Before that meeting we will
12 let you know.

13 MR. COLLINS: Let the Board know and
14 copy the two attorneys at least by letter. That
15 would be a public record.

16 MR. HALL: Okay. We can do that.

17 MR. COLLINS: It doesn't have to be
18 anything more than the name and address of the
19 witness. And if they're going to have an expert
20 report, maybe you can produce it.

21 MR. HALL: Okay. Okay.

22 MR. COLLINS: Okay. So we're going to
23 carry the KDC application without additional
24 notices to the January 7th, 2016 meeting. That's
25 the first time I've had to say that publicly, I

1 think. It's kind of depressing.

2 MR. HALL: I assume you'll be
3 reorganizing that night. Do you expect any
4 changes in the Board?

5 BOARD MEMBER GUTTSCHALL: We will be
6 reorganizing.

7 MR. HALL: Do you know if there will be
8 any changes?

9 MR. COLLINS: 7 p.m.

10 MR. FERRIERO: I don't know, Gary.

11 MR. HALL: You'll find out. I was just
12 asking if you knew. All right. Thank you.

13 ACTING CHAIRMAN RODELIUS: 7 p.m.
14 January 7, 2016 this case is carried to without
15 additional notices.

16 MS. DONATO: Thank you very much.

17 MR. HALL: Good night.

18 (Whereupon, the hearing was adjourned at
19 10:19 p.m. to January 7, 2016 at 7:00 p.m.)

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C E R T I F I C A T E

25

1 I, BRIDGET LOMBARDOZZI, Notary Public and
2 Certified Shorthand Reporter of the State of
3 New Jersey, do hereby certify that the
4 foregoing is a true and accurate transcript of
5 the testimony as taken stenographically by and
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8 I DO FURTHER CERTIFY that I am neither a
9 relative nor employee nor attorney nor counsel
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